Bayside Council
Serving Our Community

MEETING NOTICE

A meeting of the
City Planning & Environment Committee
will be held in the Committee Room, Botany Town Hall
Corner of Edward Street and Botany Road, Botany
on **Wednesday 10 August 2022** at **6:30 pm**

AGENDA

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8 CONFIDENTIAL REPORTS

Nil

The meeting will be video recorded and live streamed to the community via Council's YouTube page, in accordance with Council's Code of Meeting Practice.

Meredith Wallace
General Manager

1 ACKNOWLEDGEMENT OF COUNTRY

Bayside Council acknowledges the 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

In accordance with Council's Code of Meeting Practice, Councillors are reminded of their Oath or Affirmation of Office made under Section 233A of the Local Government Act and their obligations under the Council's Code of Conduct to disclose and appropriately manage conflicts of interest.

4 MINUTES OF PREVIOUS MEETINGS

4.1 Minutes of the City Planning & Environment Committee Meeting - 13 July 2022

Bayside Council
Serving Our Community

City Planning & Environment Committee 10/08/2022

Item No	4.1
Subject	**Minutes of the City Planning & Environment Committee Meeting - 13 July 2022**
Report by	Cathryn Bush, Coordinator Governance
File	SF22/815

Officer Recommendation

That the Minutes of the City Planning & Environment Committee meeting held on 13 July 2022 be confirmed as a true record of proceedings.

Present

Councillor Jo Jansyn
Councillor Liz Barlow
Councillor Christina Curry (Mayor) (via audio-visual link)
Councillor Heidi Lee Douglas (via audio-visual link)
Councillor Jennifer Muscat
Councillor Greta Werner

Also present

Meredith Wallace, General Manager
Peter Barber, Director City Futures
Michael Mamo, Director City Performance
Colin Clissold, Director City Presentaion
Fausto Sut, Manager Governance & Risk
Clare Harley, Manager Strategic Planning
Josh Ford, Coordinator Stratutory Planning
Nigel Riley, Senior Urban Planner
Louise Farrell, Manager City Projects
Benjamin Heraud, Coordinator Property
Suhradam Patel, IT Support Officer
Gina Nobrega, Governance Officer

The Chairperson opened the meeting in the Committee Room of Botany Town Hall at 6:35pm.

1 Acknowledgement of Country

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

2 Apologies and Attendance via Audio-Visual Link

Apologies (Councillor Muscat / Councillor Werner)

That the following apologies be received:

- Councillor Bill Saravinovski
- Councillor Heidi Lee Douglas

Attendance Via Audio-Visual Link (Councillor Muscat / Councillor Werner)

That the Mayor, Councillor Dr Christina Currys' attendance at tonight's meeting via audio-visual link be granted.

3 Disclosures of Interest

There were no disclosures of interest.

4 Minutes of Previous Meetings

4.1 Minutes of the City Planning & Environment Committee Meeting - 8 June 2022

Committee Recommendation (Councillor Barlow / Councillor Muscat)

That the Minutes of the City Planning & Environment Committee meeting held on 8 June 2022 be confirmed as a true record of proceedings.

4.2 Business Arising

Note: The Committee notes that the Minutes of the City Planning & Environment Committee meeting of 8 June 2022 were received and the recommendations therein were adopted by the Council at its meeting of 22 June 2022.

5 Items by Exception

There were no Items by Exception.

6 Public Forum

Item CPE22.018 Planning Proposal: 215-235 O'Riordan Street and 1-3 Ewan Street, Mascot

Mr Ian Cady (Director – Mecone) and Elysse Kuhar (Senior Planner – Mecone), applicant's representatives, joined the meeting via Teams to answer any questions from the Committee.

Item CPE22.018 Planning Proposal: 215-235 O'Riordan Street and 1-3 Ewan Street, Mascot

Mr Leo Chandiok (Studio Director – Mode) and Mr Kirk Macdonnell (Associate – Mode), applicant's representatives, joined the meeting via Teams to answer any questions from the Committee.

Note: Item CPE22.018 was considered next.

7 Reports

CPE22.016 Draft amendment to the Rockdale s94A Contributions Plan and pooling of Contributions under the Ministerial Direction of May 2020

Committee Recommendation (Councillor Barlow / Councillor Muscat)

1 That Council approves the public exhbition of a draft Amendment to the Rockdale s94A Developer Contributions Plan to include embellishment of Barton Park as a project in the Works List.

2 That Council approves the use of $19.65M from the Rockdale s94A Developer Contributions Plan to fund (in part) proposed upgrades to Barton Park.

3 That Council notes that a Direction issued by the Minister for Planning on 18 May 2020, under s7.17 of the Environmental Planning and Assessment Act 1979 is still in force and confirms that Council can pool contributions to fund the proposed works.

Division called by Councillors Barlow and Muscat.

For: Councillors Jansyn, Barlow, Curry and Muscat

Against: Councillor Werner

The division was declared carried

CPE22.017 Draft Planning Agreement - 13B Church Avenue and 6-8 John Street, Mascot

Committee Recommendation (Councillor Curry / Councillor Barlow)

1 That Council receives and endorses the Offer dated 23 May 2022 and the Draft Planning Agreement dated 2 June 2022 noting that further amendments will be minor and administrative in nature.

2 That the final Draft Planning Agreement be publicly notified in accordance with legislative requirements.

3 That the General Manager and delegate(s) are authorised to negotiate and finalise all documentation necessary following the conclusion of the public notification period, taking into consideration any submissions.

4 That authority be delegated to the General Manager to execute all documentation (including the final Planning Agreement) necessary to give effect to these resolutions.

CPE22.018 Planning Proposal: 215-235 O'Riordan Street and 1-3 Ewan Street, Mascot

The following person spoke at the meeting via audio-visual link:

Mr Ian Cady, applicant's representative, answered questions from the Committee.

Committee Recommendation (Councillor Werner / Councillor Muscat)

That Council does not support the Planning Proposal (PP) for land at 215- 235 O'Riordan Street and 1- 3 Ewan Street due to the adverse impacts the increased FSR will have on the community.

Division called by Councillors Werner and Muscat

For: Councillors Jansyn, Barlow, Curry, Muscat and Werner

Against: Nil

The division was declared carried

CPE22.019 NSW Department of Planning and Environment's Policy Proposal for Developments Near High Pressure Dangerous Goods Pipelines

Committee Recommendation (Councillor Werner / Councillor Barlow)

1 That Council acknowledges that a draft submission in relation to the exhibition version of the 'Policy Proposal for Developments Near High Pressure Dangerous Goods Pipelines' has been provided to the NSW Department of Planning and Environment (DPE).

2 That Council endorses the draft submission, attached to this report, as a final submission to DPE.

CPE22.020 Submission on Draft Randwick Comprehensive Local Environmental Plan (LEP)

Committee Recommendation (Councillor Curry / Councillor Werner)

1 That Council acknowledges that a draft submission has already been provided to Randwick City Council on this matter.

2 That Council endorses the draft submission attached to this report, and formally submit it to Randwick City Council, confirming this as Council's final, endorsed

submission, subject to clarifying the impact on adjoining residents at Beauchamp Road, Hillsdale.

CPE22.021 Results of community engagement for the two parks at Downey Street and Mimosa Street, Bexley and Victory Reserve, Kogarah.

Committee Recommendation (Councillor Barlow / Councillor Muscat)

1 That Council notes the results from community engagement for two open space upgrades at Victory Reserve, Kogarah and near the intersection Downey and Mimosa Streets in Bexley.

2 That the Concept Plans being progressed to detailed design be endorsed by Council.

8 Confidential Reports / Matters

There were no confidential reports or confidential matters.

9 Conclusion of the Meeting

The Chairperson closed the meeting at 7:24 pm.

The next meeting will be held in the Botany Town Hall Committee Room at 6:30 pm on Wednesday, 10 August 2022.

Attachments

Nil

5 ITEMS BY EXCEPTION

These are items that have been identified to be confirmed in bulk in accordance with the Officer Recommendation and without debate. These items will not include items identified in the Public Forum, items in which councillors have declared a Significant Conflict of Interest and a Pecuniary Interest, items requiring a Division and any other item that a Councillor has identified as one they intend to speak on or vote against the recommendation

6 PUBLIC FORUM

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

Any item the subject of the Public Forum will be brought forward and considered after the conclusion of the speakers for that item.

7 REPORTS

City Planning & Environment Committee 13/07/2022

Item No	CPE22.022
Subject	**Draft Bayside Comprehensive Development Control Plan 2022**
Report by	Nigel Riley, Senior Urban Planner Josh Ford, Coordinator Statutory Planning
File	F18/262

Summary

This report seeks Council's endorsement of the draft Bayside Development Control Plan 2022 (Bayside DCP 2022) (**Attachment 1**), Appendices (**Attachment 2**) and updated draft Technical Specifications (**Attachments 3-5**) to be publicly exhibited for community comment.

The draft Bayside DCP 2022 is a consolidated DCP for the Bayside Local Government Area, and is one of two key land use planning documents that give effect to the Bayside Local Strategic Planning Statement (LSPS) – the other being the Bayside Local Environmental Plan 2021 (Bayside LEP 2021), which commenced on 27 August 2021.

It is intended that the draft Bayside DCP 2022 will:

- Carry forward most of the provisions contained in existing DCPs – Botany Bay Development Control Plan 2013 and Rockdale Development Control Plan 2011;
- Create a common set of DCP objectives and controls for the Bayside LGA;
- Reflect the objectives of the Greater Sydney Region Plan: A Metropolis of Three Cities, and the priorities of the Eastern City District Plan;
- Implement the relevant Priority and Actions of the Bayside LSPS;
- Complement the aims, objectives, land use tables and clauses of Bayside LEP 2021; and
- Address anomalies and inconsistencies in the current DCPs.

Whilst the harmonisation of existing DCPs is not intended to result in extensive changes to numerical planning controls, there are key structural differences between the existing DCPs which have been addressed in the draft Bayside DCP 2022. The preparation of Bayside LEP 2021 – itself primarily a harmonisation of previous LEPs in Bayside LGA – has also necessitated a review of DCP provisions, to ensure they give effect to, and complement, the LEP.

Officer Recommendation

1 That, in accordance with Clause 13 of the NSW Environmental Planning and Assessment Regulation 2021, the draft Bayside Development Control Plan 2022 and accompanying draft Technical Specifications be placed on public exhibition for a period of 28 days.

2 That, in accordance with Clause 15 of the NSW Environmental Planning and Assessment Regulation 2021, the draft Development Control Plan be referred to the Bayside Design Review Panel for comment and recommendations.

3 That Council receives a further report post-exhibition to consider any submissions made during the public exhibition period.

Background

The proclamation of Bayside LGA in 2016 required the preparation of a new, comprehensive Local Environmental Plan (LEP) and Development Controls Plan (DCP) for the entire Bayside LGA, and replacement of all LEPs and DCPs belonging to the former Councils of Botany Bay and Rockdale.

In August 2021, the *Bayside Local Environmental Plan 2021* (Bayside LEP 2021) came into force, superseding former LEPs, *Botany Bay Local Environmental Plan 1995* and *2013* and *Rockdale Local Environmental Plan 2011*.

The Bayside LGA also has two DCPs in effect:

- Botany Bay Development Control Plan 2013 (Botany Bay DCP 2013)
- Rockdale Development Control Plan 2011 (Rockdale DCP 2011).

The draft Bayside DCP 2022 has been prepared to replace these DCPs, and to ensure that both this document and the Bayside LEP 2021 give effect to, and complement, each other. The DCP will be made in accordance with section 3.43 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).

Planning Our Future

In 2017, the *EP&A Act 1979* was amended to introduce a new planning framework which places an increased emphasis on strategic planning. The amended Act includes a requirement (section 3.9) for Councils to prepare a 'Local Strategic Planning Statement' (LSPS) which must include or identify:

- the basis for strategic planning in the area, having regard to economic, social and environmental matters,
- the planning priorities for the area that are inconsistent with any strategic plan applying to the area and any applicable community strategic plan
- the actions for achieving those planning priorities, and
- the basis on which Council is to monitor and report on the implementation of those actions

The LSPS was required to be prepared prior to the preparation of Bayside's LEP and DCP, to inform Bayside's strategic planning framework (including potential future changes to Bayside's LEP and DCP), as well as providing a link between regional strategic documents – such as the Greater Sydney Region Plan and Eastern City District Plan – and the LEP and DCP.

In September 2019, Council placed the draft Bayside LSPS on public exhibition and implemented a community engagement plan to reach a wide range of community members. Additionally, to help inform the community about the LSPS, Council hosted eight Information stations at strategic locations across the LGA over a four week period. This exhibition period – under the umbrella term 'Planning Our Future' – outlined that Council is preparing three new strategic planning documents: LSPS, LEP and DCP.

An illustration of the hierarchy of key regional and local strategic planning documents, applicable to Bayside Council, was provided during the Planning Our Future exhibition period, shown at **Figure 1** below.

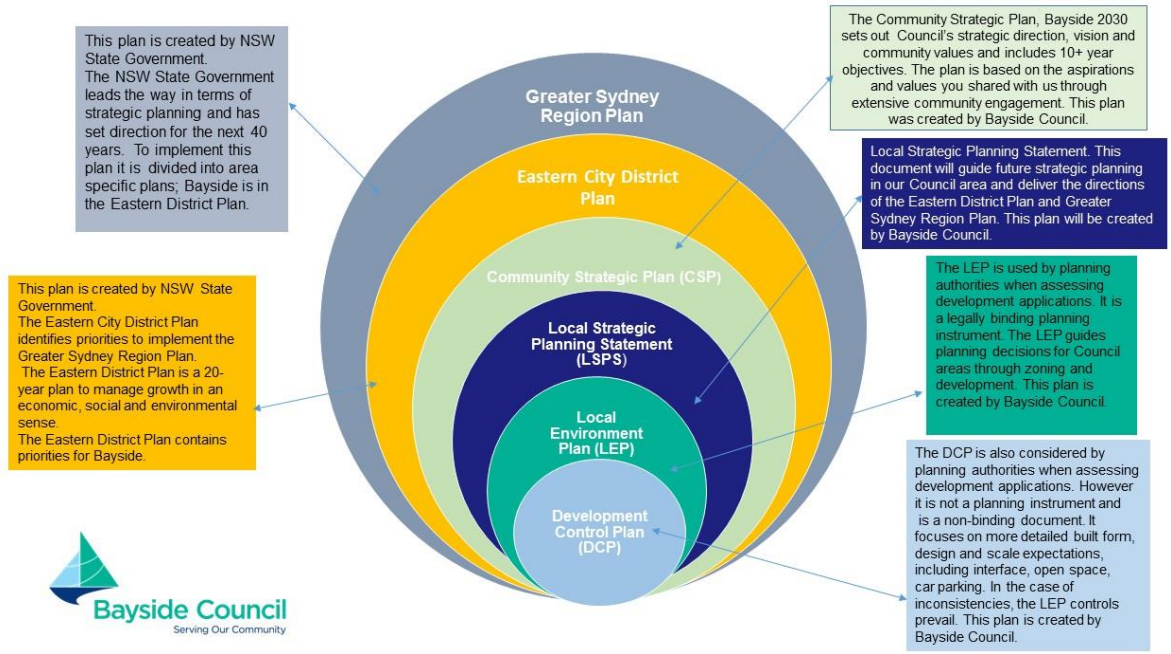


Figure 1: Hierarchy of Regional and Local Strategic Planning Documents applicable to Bayside Council

Council commenced preparation of Bayside's LEP and DCP concurrently. Public exhibition of the Bayside LEP occurred between 8 April and 1 June 2020. Following consideration of submissions received during exhibition, on 24 June 2020, Council resolved to submit the LEP to the NSW Department of Planning and Environment for finalisation. On 27 August 2021, the Bayside LEP 2021 came into force.

Given the strict deadlines imposed by the NSW Department of Planning and Environment, Council was not able to incorporate strategic changes, as it had previously anticipated. A number of localities and issues are subject to further investigation and potential future change to Bayside LEP 2021.

Implementation Plans are being drafted and will draw together actions from Bayside's LSPS, Local Housing Strategy (adopted 10 March 2021), and other draft and adopted documents which have formed Bayside's strategic planning evidence base.

Preparation of draft Bayside DCP 2022

Development Control Plans provide detailed planning and design provisions, and guidelines, to support the planning controls contained in LEPs. The draft Bayside DCP 2022 will contain detailed development controls to facilitate quality development, protect neighbourhood amenity, and maintain environmental quality. It will set requirements for site amalgamation, setbacks, building envelopes, landscape treatments, privacy, parking and other detailed planning, urban design, and public domain interface considerations.

The preparation of the draft DCP has largely been a harmonisation exercise, for reasons outlined above. This is a valuable and necessary exercise, as it provides a singular, consistent structure, level of detail and coverage of topics at DCP level across the Bayside LGA.

At present, the Bayside LGA is subject to two separate, structurally-different DCPs:

- **Botany Bay DCP 2013** is over 1,300 pages long and includes a heavy focus on precinct-based controls. The majority of the former Botany Bay LGA is subject to broad 'character precinct' chapters under this DCP (excluding land subject to Three Ports provisions under the *State Environmental Planning Policy (Transport and Infrastructure) 2021*). In addition, there are chapters governing general development, specific land uses and building types, land use zones and smaller-scale development precincts.

- **Rockdale DCP 2011** is under 300 pages long, with a focus primarily on general principles for development and building types. There is a limited focus on precinct-based planning, including select growth areas within the former Rockdale LGA, such as Wolli Creek, Arncliffe, Banksia, and Rockdale Town Centre.

Drafting of the Bayside DCP 2022 has primarily involved the following tasks (carried out with the assistance of various specialist teams across Council):

- Applying a consistent structure for all chapters, objectives and controls across the draft DCP
- Ensuring current Bayside LEP 2021 controls are accurately reflected in equivalent DCP content
- Rationalising different versions of the same control over both current DCPs
- Eliminating unnecessary duplications and superfluous detail in controls
- Updating statutory requirements and removing any obsolete statutory references
- Updating or removing controls that do not achieve desired intent, no longer operate as originally intended or contradict other controls

Precinct-based chapters in both current DCPs were also reviewed from a practical standpoint. Changes have been made to text, mapping, and other graphical content of these chapters, wherever it was determined that a chapter no longer effectively operated for a defined precinct boundary. This has primarily occurred on the former Botany Bay LGA side, where some 'character precincts' were considered too broadly defined to contain effective precinct-based controls, and where the majority of these chapters duplicated controls found elsewhere in the DCP.

The structure of the proposed draft Bayside DCP 2022, including key features and changes, is described in **Table 1** below:

Table 1: Draft Bayside DCP 2022 Structure

Section	Key Features / Changes
1 Table of Contents and Amendment History	-
2 Preliminary Information	This part harmonises the aims and objectives and other preliminary information contained in Botany Bay DCP 2013 and Rockdale DCP 2011.
3 General Development Provisions	This part provides overarching provisions for development in the Bayside LGA. The provisions are generally in line with existing provisions of the Botany Bay DCP 2013 and Rockdale DCP 2011. Noteworthy new controls or inclusions are: - Updated Transport, Parking and Access provisions, including new EV charging controls; - A new Design Excellence chapter outlining the process for design excellence; - Updated Stormwater Management and Flood Prone Land chapter - Updated terminology in the Contamination chapter - Mapped provisions relating to Biodiversity and Wetlands, which elaborate upon provisions contained in Bayside LEP 2021 Clause 6.5 Riparian Land, Wetlands and Waterways; - LGA-wide Late Night Trading provisions Updated Technical Specifications have been prepared, which will elaborate upon general development provisions for Transport, Parking and Access; Stormwater Management; Landscape and Waste Management.
4 Subdivision	Bayside LEP 2021 contains the primary provisions for minimum lot size throughout the LGA, however the former Botany Bay LGA does not have lot sizes within the LEP. In these cases, the predominant surrounding subdivision pattern must be reflected in development proposals. This part otherwise provides for general requirements and considerations as a part of the subdivision process. *<u>Note:</u> Council will progress Planning Proposals to amend subdivision controls in the Bayside LEP 2021 to bring into effect actions contained in the Bayside Local Housing Strategy. The relevant DCP chapters will be reviewed at a future stage to align with any proposed LEP amendments as these Planning Proposals progress.*
5 All Residential	This part provides controls for all residential development types. Whilst resultant built form controls are generally consistent with the existing provisions, several areas of inconsistency between the two former LGAs did exist and have been made consistent

	for this version. This includes aligning front / side / rear setbacks for residential development where inconsistencies currently exist between the two former LGAs.
6 Non Residential	This part provides general controls for a range of non-residential development including commercial, business, office, industrial, and other development types. Some existing DCP controls for specific industrial type land uses have been incorporated into general provisions relating to Industrial premises. New controls for 'creative industries' have been included. Setbacks for industrial development reflects the existing Botany Bay DCP 2013 provisions, whilst new setbacks have been introduced for business/commercial premises where precinct-specific controls do not exist or a consistent setback does not exist.
7 Specific Places	This part has consolidated a number of place-specific controls that existed throughout the Botany Bay DCP 2013 and Rockdale DCP 2011. In doing so, a number of precincts that were already developed or which did not contain any controls specific to the mapped precinct areas have not been carried across from the existing DCPs. Several other precincts were merged or had boundaries otherwise amended to better reflect the boundaries of a 'character precinct' or underlying zonings. Rockdale Town Centre has recently been the subject of proposed standalone LEP and DCP amendments under the Planning Proposal: Amendment 1 to the Bayside LEP 2021. The updated DCP chapter for Rockdale Town Centre was endorsed by Council at its meeting on 22 June 2022, and will come into force upon notification of the LEP amendments under this Planning Proposal (expected later in 2022). This DCP chapter will be inserted into Chapter 7.2 of the Draft DCP, and no further changes are proposed to the endorsed controls under this process. Existing Heritage Conservation Areas are contained within the relevant precinct chapter, which should be read alongside general development provisions contained in Chapter 3.4 Heritage.
8 Managing Risk and Environmental Conditions	This part provides for environmental controls which apply only to specific places within the Bayside LGA. The controls have aimed to provide a clearer, centralised overview of these matters (such as airport related controls or risk from industrial development) which were previously contained throughout several different chapters in the Botany Bay DCP 2013.
9 Schedules	This part harmonises dictionaries and notification procedures from Botany Bay DCP 2013 and Rockdale DCP 2011. It also provides detailed guiding information and requirements to be

	read alongside the updated general development provisions for: Late Night Trading; Flood Prone Land; Waste Minimisation and Management; and Transport, Parking and Access.

A summary of the proposed structure of the draft DCP, including key features and changes is included at **Attachment 7**.

The Technical Specifications prepared in conjunction with the relevant current DCP chapters have also been updated. Draft Technical Specification accompany the draft DCP in this report and include:

- Stormwater Management (**Attachment 3**);
- Landscape (**Attachment 4**);
- Traffic, Parking and Access (**Attachment 5**); and
- Waste Management (**Attachment 6**).

Throughout the preparation of this draft DCP, various opportunities for more detailed investigations have been identified as part of future strategic reviews of the draft DCP. These reviews will fall under actions identified in the emerging Implementation Plan, including strategic planning investigations earmarked in Bayside's LSPS and Local Housing Strategy.

Next Steps

Consideration by Council (pre-exhibition)	27 July 2022
Public exhibition of draft DCP and Technical Specifications	August-September 2022
Post-exhibition consideration of submissions	End September 2022
Council meeting to endorse final draft DCP	October 2022
Notification to Secretary DPE - Council's adoption of DCP	End October 2022

Financial Implications

Not applicable ☒

Community Engagement

The draft Bayside DCP 2022 will be exhibited for a period of 28 days in accordance with the provisions of the EP&A Act 1979, EP&A Regulation 2021 and the Bayside Community Participation Plan.

Public exhibition of the draft DCP will include:

- Exhibition notice on Council's website

- Community engagement project set up on Council's Have Your Say website
- Notices in Council libraries
- Written notification to all landowners and residents in the LGA, including letters to landowners of properties affected by a proposed change in the planning controls
- Written notification to all Talking Bayside Members
- Written notification to anyone who submitted feedback as part of Council's Planning Our Future and Local Strategic Planning Statement consultation projects
- Written notification to relevant State and Commonwealth Government agencies
- Written notification to adjoining Councils.

Attachments

1 Draft Bayside DCP 2022 (Under separate cover Attachments Part One) ⇨

2 Draft Bayside DCP 2022 - Appendices (Under separate cover Attachments Part One) ⇨

3 Draft Technical Specification - Stormwater Management (Under separate cover Attachments Part One) ⇨

4 Draft Technical Specification - Landscape (Under separate cover Attachments Part One) ⇨

5 Draft Technical Specification - Traffic, Parking and Access (Under separate cover Attachments Part One) ⇨

6 Draft Technical Specification - Waste Management (Under separate cover Attachments Part One) ⇨

7 Table of Proposed DCP Structure, Key Features and Changes ⇩

Draft Bayside Development Control Plan 2022 – Structure, Key Features and Changes

Section	Contents	Relevant sections in Botany Bay DCP 2013	Relevant sections in Rockdale DCP 2011	Key Features and Changes
1 Table of Contents and Amendment History	1.1 Table of Contents 1.2 Amendment History	3 Cover & Contents Page	Contents	-
2 Preliminary Information	2.1 Name of this DCP 2.2 Adoption and Commencement 2.3 Review of the Plan 2.4 Application and Consent Authority 2.5 Aims and Objectives of the Plan 2.6 Compliance 2.7 Relationship to other plans, standards and codes 2.8 Savings Provisions	1 Introduction	1 Preliminary 2 Urban Strategy	This part harmonises the aims and objectives and other preliminary information contained in Botany Bay DCP 2013 and Rockdale DCP 2011.
3 General Development Provisions	3.1 Site Analysis and Locality 3.2 Design Excellence 3.3 Energy and Environmental Sustainability 3.4 Heritage 3.5 Transport, Parking and Access 3.6 Social Amenity, Accessibility and Adaptable Design 3.7 Landscaping, Private Open Space and Biodiversity 3.8 Tree Preservation and Vegetation Management 3.9 Stormwater Management and Water Sensitive Urban Design 3.10 Flood Prone Land 3.11 Contamination 3.12 Waste Minimisation and Site Facilities 3.13 Obstacle Limitation Surface and Airspace 3.14 Noise, Wind, Vibration and Air Quality 3.15 Late Night Trading 3.16 Signs and Advertising 3.17 Telecommunications Facilities 3.18 Utilities and Mechanical Plant	3A Car Parking 3B Heritage 3C Access Mobility 3D Signage 3G Stormwater Management 3H Sustainable Design 3I Crime Prevention 3J Development Affecting Operations at Sydney Airport 3K Contamination 3L Landscaping and Tree Management 3M Natural Resources 3N Waste Minimisation & Management	3 Site Analysis 4 General Principles for Development 4.1 Site Planning 4.2 Streetscape and Site Context 4.3 Landscape Planning and Design 4.4 Sustainable Building Design 4.5 Social Equity 4.6 Car Parking, Access and Movement 4.7 Site Facilities 6 Other Development 6.3 Telecommunication Facilities 6.4 Advertising and Signage	This part provides overarching provisions for development in the Bayside LGA. The provisions are generally in line with existing provisions of the Botany Bay DCP 2013 and Rockdale DCP 2011. Noteworthy new controls or inclusions are: - Updated Transport, Parking and Access provisions, including new EV charging controls; - A new Design Excellence chapter outlining the process for design excellence; - Updated Stormwater Management and Flood Prone Land chapter - Updated terminology in the Contamination chapter - Mapped provisions relating to Biodiversity and Wetlands which elaborate upon provisions contained in Bayside LEP 2021 Clause 6.5 Riparian land, wetlands and waterways; - LGA-wide Late Night Trading provisions Updated Technical Specifications have been prepared, which will elaborate upon general development provisions for Transport, Parking and Access; Stormwater Management; Landscape and Waste Management.
4 Subdivision	4.1 General 4.2 Residential Subdivision 4.3 Non-Residential Subdivision 4.4 Strata Subdivision 4.5 Community Title Schemes 4.6 Connectivity and Future Development Potential	3E Subdivision		Bayside LEP 2021 contains the primary provisions for minimum lot size throughout the LGA, however the former Botany Bay LGA does not have lot sizes within the LEP. In these cases, the predominant surrounding subdivision pattern must be reflected in development proposals. This part otherwise provides for general requirements and considerations as a part of the subdivision process. N.b. Council will progress Planning Proposals to amend subdivision controls in Bayside LEP 2021 to bring into effect actions contained in Bayside's Local Housing Strategy. The relevant DCP chapters will be reviewed at a

Section	Contents	Relevant sections in Botany Bay DCP 2013	Relevant sections in Rockdale DCP 2011	Key Features and Changes
				future stage to align with any proposed LEP amendments as these Planning Proposals progress.
5 All Residential	5.1 All Residential 5.2 Residential & Mixed-Use Development	4A Low Density Residential Housing 4B Multi Dwelling Housing 4C Apartment Buildings 7O Swimming Pools	5 Building Types 5.1 Low and Medium Density Residential 5.2 Residential Flat Buildings 5.3 Mixed Use	This part provides controls for all residential development types. Whilst resultant built form controls are generally consistent with the existing provisions, several areas of inconsistency between the two former LGAs did exist and have been made consistent for this version. This includes aligning front / side / rear setbacks for residential development where inconsistencies currently exist between the two former LGAs. N.b. Council will progress Planning Proposals to amend residential controls in Bayside LEP 2021 to bring into effect actions contained in Bayside's Local Housing Strategy. The relevant DCP chapters will be reviewed at a future stage to align with any proposed LEP amendments as these Planning Proposals progress.
6 Non Residential	6.1 All non-residential 6.2 Retail Premises 6.3 Commercial Premises 6.4 Industrial premises 6.5 Restricted premises and sex service premises 6.6 Artisan food and drink premises 6.7 Visitor and tourist accommodation 6.8 Early education and childcare facilities 6.9 Places of Public Worship 6.10 Creative industries 6.11 Vehicle body repair workshops and vehicle repair stations 6.12 Caretaker Dwellings	5 Business Centres 6 Employment Zones 7A Shared Accommodation 7B Outdoor Dining 7C Child Care Centres 7F Hotel accommodation 7G Licenced Late Night Trading 7H Neighbourhood Shops 7I Places of Public Worship 7J Uses involving the Preparation and Storage of Food 7L Serviced Apartments 7Q Vehicle repair stations 7S Vehicle Sales and Hire Premises	5 Building Types 5.4 Highway Commercial 5.5 Industrial 6 Other Development 6.1 Child Care Centres 6.2 Restricted Premises and Sex Services Premises	This part provides general controls for a range of non-residential development including commercial, business, office, industrial, and other development types. Some existing DCP controls for specific industrial type land uses have been incorporated into general provisions relating to Industrial premises. New controls for 'creative industries' have been included. Setbacks for industrial development reflects the existing Botany Bay DCP 2013 provisions, whilst new setbacks have been introduced for business/commercial premises where precinct-specific controls do not exist or a consistent setback does not exist.
7 Specific Places	7.1 Bexley Town Centre 7.2 Rockdale Town Centre 7.3 Ramsgate Beach Commercial Area 7.4 Arncliffe and Banksia 7.5 Bonar Street Precinct 7.6 Wolli Creek 7.7 Mascot West Employment Lands 7.8 Mascot Station Town Centre 7.9 Rosebery Character Precinct 7.10 Mascot Local Centre 7.11 Maloney Street Neighbourhood Centre 7.12 Botany 7.13 Botany South	8 Character Precincts 8.2 Hillsdale Character Precinct 8.4 Botany Character Precinct 8.5 Daceyville Character Precinct 8.6 Rosebery Character Precinct 8.7 Mascot Character Precinct 8.9 Banksmeadow Character Precinct 9A Mascot Station Precinct 9B Botany South Precinct	7 Special Precincts 7.1 Wolli Creek 7.2 Bonar Street Precinct 7.3 Bexley Town Centre 7.4 Ramsgate Beach Commercial Area 7.5 Rockdale Town Centre 7.7 Arncliffe and Banksia	This part has consolidated a number of Place-specific controls that existed throughout the Botany Bay DCP 2013 and Rockdale DCP 2011. In doing so, a number of precincts that were already developed or which did not contain any controls specific to the mapped precinct areas have not been carried across from the existing DCPs. Several other precincts were merged or had boundaries otherwise amended to better reflect the boundaries of a 'character precinct' or underlying zonings. Rockdale Town Centre has recently been subject of proposed standalone LEP and DCP amendments under the Planning Proposal: Bayside LEP 2021 Amendment 1.

Section	Contents	Relevant sections in Botany Bay DCP 2013	Relevant sections in Rockdale DCP 2011	Key Features and Changes
	7.14 Page Street Neighbourhood Centre 7.15 Banksmeadow Industrial Precinct 7.16 Hillsdale Local Centre 7.17 Daceyville			The updated DCP chapter for Rockdale Town Centre was endorsed by Council at its meeting on 22 June 2022 and will come into force upon notification of the LEP amendments under this Planning Proposal (expected later in 2022). This DCP chapter will be inserted into Chapter 7.2 of the Draft DCP and no further changes are proposed to the endorsed controls under this process. Existing Heritage Conservation Areas are contained within the relevant precinct chapter, which should be read alongside general development provisions contained in Chapter 3.4 Heritage.
8 Managing Risk and Environmental Conditions	8.1 Coastal foreshores and hazards 8.2 Riparian land, wetlands and waterways 8.3 Hazardous development and Risk 8.4 Soil Management 8.5 Development on Sloping Sites	3M Natural Resources		This part provides for environmental controls which apply only to specific places within the Bayside LGA. The controls have aimed to provide a clearer, centralised overview of these matters (such as airport related controls or risk from industrial development) which were previously contained throughout several different chapters in the Botany Bay DCP 2013.
9 Schedules	9.1 Dictionary 9.2 Notification Procedures 9.3 Landscape Plan Requirements 9.4 Late Night Trading Plan of Management Requirements 9.5 Flood Hazard Vulnerability Curves and Classification, Flood Compatible Materials & Building Component, Flood Assessment Reporting 9.5 Waste Minimisation and Management 9.6 Traffic, Parking and Access	2 Notification and Advertising	8 Notifications Definitions	This part harmonises dictionaries and notification procedures from Botany Bay DCP 2013 and Rockdale DCP 2011. It also provides detailed guiding information and requirements to be read alongside the updated general development provisions for: Late Night Trading; Flood Prone Land; Waste Minimisation and Management; and Transport, Parking and Access.

City Planning & Environment Committee 13/07/2022

Item No	CPE22.023
Subject	**Draft Planning Proposal - Minimum Lot Sizes for Dual Occupancies and Semi-Detached Dwellings**
Report by	Nigel Riley, Senior Urban Planner
File	F21/387

Summary

This draft Planning Proposal (**Attachment 1**) will have the effect of amending the *Bayside Local Environmental Plan 2021* (BLEP 2021) to introduce new controls for Dual Occupancy and Semi-Detached Dwelling development in the R2 Low Residential Zone, relating to:

- minimum lot size,
- subdivision lot size and
- lot width.

The proposal is one of a suite of three draft Planning Proposals that are being prepared to update and rationalise planning controls for residential uses in the R2 and R3 Medium Density Residential.

This draft Planning Proposal (PP) is being prioritised in response to the recently published Low Rise Housing Diversity Code (LRHD Code), contained in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). The LRHD Code was introduced to encourage medium density housing types and permit Dual Occupancies as Complying Development in R2 and R3 zones. It establishes new controls that override local LEP controls, with the exception of a minimum lot size control. Under the Code, Dual Occupancies can be carried out as Complying Development on lots as small as 400 sqm.

As the BLEP 2021 does not currently specify minimum lot size controls for Dual Occupancy, a lot size of 400 sqm applies under the LRHD Code, leaving lower-density residential neighbourhoods vulnerable to disruptive change from development that is out of character. Council seeks to address this by introducing a new more representative minimum lot size for Dual Occupancies in the R2 zone. Supplementary controls governing minimum lot width for Dual Occupancies are also proposed, and requirements in Council's Development Control Plan (DCP) are also being reviewed to ensure consistency.

The draft PP was considered by the Bayside Local Planning Panel (BLPP) at its meeting on 26 May 2022. The BLPP supported the draft PP being submitted for a Gateway Determination, but suggested the proposed new clauses be simplified.

At this stage in the process, it is sufficient for the draft PP to contain an explanation of provisions. The draft PP contains a level of detail necessary to capture all possible development eventualities subject to the proposed provisions. No changes to the explanation of provisions are proposed in response to the BLPP's recommendations. However, a more simplified approach can be discussed with Parliamentary Counsel in the final drafting stage (should the draft PP progress), that achieves the intent of the draft PP.

Officer Recommendation

1 That, pursuant to s3.34 of the *Environmental Planning and Assessment act 1979* (EP&A Act), the draft Planning Proposal be submitted to the Department of Planning and Environment for a Gateway Determination.

2 That, should a Gateway Determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway Determination and to provide details of any submissions received throughout that process.

3 That the Rockdale Development Control Plan 2011 (RDCP 2011) and Botany Bay Development Control Plan 2013 (BBDCP 2013) be reviewed concurrently with the draft Planning Proposal, to ensure consistency between controls contained in these documents and the draft Planning Proposal.

4 That, should a Gateway determination be issued, a future report be tabled to Council to consider any proposed amendments to the RDCP 2011 and BBDCP 2013, which would be exhibited concurrently with the draft Planning Proposal.

Background

The proposal is one of a suite of three draft PPs that are being prepared to update and rationalise planning controls for residential uses in the R2 and R3 Medium Density Residential zones under Council's adopted Local Housing Strategy (LHS), the other two being:

- Draft Planning Proposal – Deletion of Additional Permitted Uses 34 & 35, considered by the BLPP at its meeting on 16 December 2021, and endorsed for progression to Gateway determination by Council at its meeting 23 March 2022); and
- Draft Planning Proposal – Changes to planning controls in Zone R3 Medium Density Residential (being prepared for consideration by the Panel and Council later in 2022).

The BLEP 2021 permits Dual Occupancies and Semi-Detached Dwellings, with consent, in all of its residential zones.

The BLEP 2021 does not prescribe a minimum lot size or lot width for the development of a new Dual Occupancy or Semi-Detached Dwelling in the LGA. Rockdale Development Control Plan 2011 (RDCP 2011) requires a minimum lot size of 700 sqm and minimum site frontage of 15m for Dual Occupancy development, and a minimum lot width control for Semi-Detached Dwellings of 9m (measured at the front alignment of the building).

Clause 4.1(3B) of the BLEP 2021 requires resulting lots of at least 350 sqm from the subdivision of a lot containing an existing Dual Occupancy, or on which a Dual Occupancy is proposed, although this provision currently only applies to land within the former Rockdale LGA.

During the preparation of the BLEP 2021, Council outlined its intention that, following the finalisation of the LEP and Council's LHS, a future amendment would be made which would inform minimum lot size controls specific to Dual Occupancies. In its Gateway assessment report, the DPE considered this approach satisfactory and noted that further refinement of

these controls should be informed by a detailed evidence base, including the LHS as a reference.

The Bayside LHS was adopted by Council in March 2021 (refer **Attachment 2**) and approved by the DPE in June 2021 (refer **Attachment 3**). The LHS contains actions pertaining to this draft PP, specifically being:

- ***Action 3.6:*** *Permit Dual Occupancies throughout the Bayside LGA with minimum site frontage and area provisions set out in the LEP (except in identified Heritage Conservation Areas or potential local character areas).*
- ***Action 6.1:*** *Review development controls including the use of minimum lot size and frontages controls to ensure that effective design can be achieved in infill development situations.*

In its letter approving the LHS, the DPE included the following requirements relevant to this draft PP:

4. To ensure housing diversity is achieved by 2036, Council is to expedite the following investigations and obtain Gateway for planning proposals by December 2022:
a) the introduction of dwelling size and mix controls;
b) the review and update of medium density controls;
c) the review and update of dual occupancy controls.

Council should concurrently review development controls including the use of controls to ensure effective design for infill development as outlined in the LHS.

9. As housing diversity is a key objective in the LHS, Council is to provide a comprehensive evidence base in relation to the delivery of medium-density housing, including dual occupancy and associated controls, particularly if Council will request an exemption from the Low Rise Housing Diversity Code. This should include:
a) Historical and forecast supply of medium-density housing, including statistics on range of housing types of approved over the last five years (development applications and complying development certificates) and anticipated future take-up rates.
b) Recommended controls outlined in LHS for medium-density housing in the implementation plan, including the current status and timeline for implementation.

A draft LHS Implementation Plan has been prepared and will be considered by Council in 2022. This plan will outline implementation details for all actions contained in the LHS, including the above actions relating to this draft PP.

In accordance with the requirements contained in the DPE's approval of the LHS, a summary of development approvals for Dual Occupancies and Semi-Detached Dwellings in the Bayside LGA over the last five years, and forecast future approvals, has been prepared, and is included in **Attachment 5**.

Low Rise Housing Diversity Code

Further impetus had been added to this draft PP by the introduction of the LRHD Code under the Codes SEPP. This Code permits Dual Occupancies as Complying Development on land in Zones R2 and R3, provided that they are already permitted in the Environmental Planning Instrument (EPI) applying to the land.

First introduced in July 2018 (then named the Low Rise Medium Density Housing Code), the LRHD Code's commencement was deferred in the Bayside LGA until July 2020. With the finalisation of the BLEP 2021 in August 2021, the Code now allows Dual Occupancies as Complying Development in R2 and R3 zones across the LGA (wherever Codes SEPP exemptions are not in place).

The intention of the Code is to encourage further take-up of the 'missing middle' of housing supply – historically undersupplied low-medium-density housing types, such as Dual Occupancies, Manor Houses and Multi-Dwelling Housing – by allowing fast tracked approvals for these housing types.

The LRHD Code contains a range of controls that development must adhere to in order to qualify as Complying Development. These relate to:

- lot size;
- lot width;
- building height;
- gross floor area (GFA) of buildings;
- setbacks (primary road, secondary road and side);
- landscaped area;
- articulation zones, screening and balconies;
- parking and vehicle access.

As these controls largely override local LEP and DCP provisions, Council has limited input into the built form outcomes that eventuate from Code-compliant Dual Occupancy developments. The exception is lot size (Clause 3B.8(1)(b) and 3B.21(b)(ii) of the Code), as the Code allows a minimum lot area control for Dual Occupancies specified in the applicable LEP to apply in place of the default control of 400 sqm.

While there is only a short history of Dual Occupancies being allowed as Complying Development under this Code in Bayside LGA, there is potential for larger scale disruptive change to occur in certain neighbourhoods with a more traditional, lower-density suburban character, in the absence of a tailored minimum lot size control being adopted under the LEP. This is due to the default control of 400 sqm being substantially lower than the current control of 700 sqm contained in the RDCP 2011, and no equivalent control in the former Botany Bay LGA. Further, under the Code, the area of the parent lot also influences the maximum GFA of buildings, minimum setbacks, and minimum landscaped area, allowable for Code-compliant Dual Occupancy developments.

It is therefore imperative that the BLEP 2021 be amended to include minimum lot size controls for Dual Occupancies to ensure that this form of development is consistent in character with the Bayside context. This draft PP will introduce controls in the R2 zone and a separate draft PP will follow in the future, which will examine medium density residential housing typologies and planning controls more broadly in the R3 zone.

Subdivision Code

The Subdivision Code, contained in the Codes SEPP, has also been amended as a result of the LRHD Code. It now allows, as Complying Development, the subdivision of land on which a Complying Development Certificate (CDC) has been issued for Dual Occupancy, provided certain requirements are met.

Clause 6.4(1)(d) allows for the Torrens Title subdivision of a Dual Occupancy development (creating Semi-Detached Dwellings), for which a CDC has been issued under the LRHD Code, provided the area of each resulting lot is at least:

(i) the minimum subdivision lot size control for Dual Occupancy development contained in an LEP; or
(ii) if no LEP control exists – 200 sqm.

Similar to the LRHD Code, the Subdivision Code therefore allows a local provision to be substituted in place of this default control of 200 sqm. For land within the former Rockdale LGA, this is already in place, as Clause 4.1(3B) specifies a minimum subdivision lot size of 350 sqm for this land. However, for land within the former Botany Bay LGA, the Code's default control still applies.

This draft PP seeks to introduce both lot size and subdivision lot size controls across the entire R2 zone, so that new LGA-wide LEP provisions will apply to Complying Development applications for Torrens Title subdivision.

Development Control Plans

A review of DCP detail is currently underway, with the intent of harmonising the RDCP 2011 and BBDCP 2013 controls into a single document for the Bayside LGA. As there are a number of controls in these documents that are directly or indirectly relevant to this draft PP, it is recommended that the RDCP 2011 and BBDCP 2013 are reviewed to ensure consistency between these controls and the draft PP.

As per the officer recommendation, if a Gateway determination is issued for this draft PP, a future report would be tabled for Council's consideration regarding proposed DCP amendments required to support the draft PP.

Draft Planning Proposal

The draft PP seeks to amend BLEP 2021 by introducing new minimum lot size, subdivision lot size and frontage width controls across the R2 zone. These controls will affect development for the purposes of:

- Construction of Dual Occupancies;
- Subdivision of land on which Dual Occupancies exist or are proposed (creating Semi-Detached Dwellings); and
- Construction of Semi-Detached Dwellings (either involving or not involving subdivision of land).

This will involve creating the following new LEP Clauses to give effect to these controls:

- 4.1A Exceptions to Minimum Subdivision Lot Size for Certain Residential Development
- Clause 4.1B Minimum Lot Sizes and Special Provisions for Certain Residential Development

A new *Special Provisions Map* will be introduced to illustrate land where exceptions are proposed to the zone-wide controls.

The new Clause 4.1A will explain that development consent must not be granted for the subdivision of land in the R2 zone on which there is an existing Dual Occupancy, or on which

Dual Occupancy or Semi-Detached Dwellings are proposed, unless the area of each *resulting lot* is at least 300 sqm (or 250 sqm in an area marked "Area A" on the proposed *Special Provisions Map*) and each of the lots will have on dwelling on it.

The clause also requires that each lot is at least 7.5m wide at the primary road frontage for lots with a single road frontage, or 6m wide for lots with multiple frontages to roads or laneways.

The new Clause 4.1B will explain that development consent must not be granted for the construction of Dual Occupancies or Semi-Detached Dwellings on land in the R2 zone, unless:

- the area of the lot on which Dual Occupancies are proposed is at least 600 sqm (or 500 sqm in the area marked "Area A" on the proposed *Special Provisions Map*); and
- the area of each lot on which Semi-Detached Dwellings are proposed is at least 300 sqm (or 250 sqm in the area marked "Area A").

The clause also requires that:

- the lot on which Dual Occupancies are proposed is at least 15m wide at the primary road frontage for lots with a single road frontage, or 12m wide for lots with multiple frontages to roads or laneways; and
- each lot on which Semi-Detached Dwellings are proposed is at least 7.5m wide at the primary road frontage for lots with a single road frontage, or 6m wide for lots with multiple frontages to roads or laneways.

A detailed explanation of the draft PP is contained in the draft PP at **Attachment 1** to this report. The proposed *Minimum Lot Size for Dual Occupancies and Semi-Detached Dwellings Map* is at **Attachment 4** to this report.

Bayside Local Housing Strategy

The purpose of the Bayside LHS is to set the strategic framework and vision for housing in the Bayside LGA up to 2036.

The Bayside LHS has been prepared in accordance with the NSW Government Local Housing Strategy Guidelines and Template (2018) and the requirements of the Greater Sydney Region Plan: A Metropolis of Three Cities (2018) and its Eastern City District Plan (2018).

To respond to the requirements, Council has developed the following housing targets for the Bayside LGA (**Table 1**). The evidence base behind these targets is contained within the Bayside LHS.

Table 1 – Bayside Housing Targets (LHS)

2016-2021	2021-2026	2026-2036	TOTAL 2016-2036
10,150	7,720	8,151	26,021

Source: SGS 2019

The draft PP is aligned with the LHS, and responds specifically to the following actions contained in the LHS:

- ***Action 3.6:*** *Permit Dual Occupancies throughout the Bayside LGA with minimum site frontage and area provisions set out in the LEP (except in identified Heritage Conservation Areas or potential local character areas).*
- ***Action 6.1:*** *Review development controls including the use of minimum lot size and frontages controls to ensure that effective design can be achieved in infill development situations.*

Action 3.6 is assigned a short-term (0-2 years) timeframe. Following commencement of the BLEP 2021, Dual Occupancies are now permitted across all of Bayside LGA's residential zones. The draft PP seeks to complete this Action within the identified timeframe.

Action 6.1 is also assigned a short-term (0-2 years) timeframe and refers to a broader undertaking, including a separate proposal that will examine medium density residential typologies across Bayside LGA's R3 zone. The draft PP will partly complete this Action, insofar as it relates to consideration of Dual Occupancies and Semi-Detached Dwellings in the R2 zone.

The DPE's 30 June 2021 letter approving the Bayside LHS (**Attachment 3**) determined that the LHS addresses housing supply and the need for housing diversity, although it noted that commitment to further actions for housing diversity and delivery are required.

The following requirements included in the letter of approval are relevant to this draft PP:

> *4. To ensure housing diversity is achieved by 2036, Council is to expedite the following investigations and obtain Gateway for planning proposals by December 2022:*
> *d) the introduction of dwelling size and mix controls;*
> *e) the review and update of medium density controls;*
> *f) the review and update of dual occupancy controls.*
>
> *Council should concurrently review development controls including the use of controls to ensure effective design for infill development as outlined in the LHS.*
>
> *9. As housing diversity is a key objective in the LHS, Council is to provide a comprehensive evidence base in relation to the delivery of medium-density housing, including dual occupancy and associated controls, particularly if Council will request an exemption from the Low Rise Housing Diversity Code. This should include:*
> *c) Historical and forecast supply of medium-density housing, including statistics on range of housing types of approved over the last five years (development applications and complying development certificates) and anticipated future take-up rates.*
> *d) Recommended controls outlined in LHS for medium-density housing in the implementation plan, including the current status and timeline for implementation.*

This draft PP prioritises the introduction of new controls to guide Dual Occupancy and Semi-Detached Dwelling development in the R2 zone. In the case of Dual Occupancies an added impetus is the commencement of the LRHD Code, and the need to introduce a more locationally-appropriate minimum lot size standards to be substituted in place of the Code's default standard of 400 sqm that currently applies across the zone.

In partial completion of the above requirements, historical and forecast supply of medium-density housing typologies relevant to this draft PP are summarised in the draft PP (**Attachment 1**) and Analysis of Historical and Forecast Supply (**Attachment 5**).

In summary, this analysis investigated the history of approvals of new Dual Occupancies and Semi-Detached Dwellings by DA and CDC over a 5-year period between November 2016 and November 2021. During this time, there were **130 approvals** across Bayside LGA's R2 zone, including 113 DA approvals and 17 CDCs (all CDCs issued in the final 12 months of this period).

Applying a methodology wherein the rate of take-up of lots observed over the 5-year approvals history is applied to remaining supply of lots under current and proposed controls, forecasts of expected approvals have been determined. These include forecasts for a no-change scenario (where the draft PP does not progress) as well as a draft PP scenario.

In a no-change scenario, a total of **200 approvals** are forecast to be issued over the upcoming 5-year period, including 109 DA approvals and 91 CDCs.

In the draft PP scenario, a forecast of **195 approvals** is estimated, including 159 DA approvals and 36 CDCs. Although there is a very slight reduction in total number possible, the quality, amenity and fit with the character of the areas in which development would occur will be far superior. Improving the quality of Dual Occupancies may increase their appeal in the market, which could in turn encourage developers to produce more of this product, as has occurred in adjoining LGAs.

As explained in further detail in the analysis in **Attachment 5**, these should be taken to be baseline forecasts, factoring in an approvals history and take-up rates influenced by changes to the statutory planning framework, as well as disruptions caused by the ongoing Covid-19 pandemic. It is arguable that the LGA will see greater take-up as post-pandemic economic conditions improve and landowners familiarise themselves with the proposed new controls under both the LEP and LRHD Code.

The following observations are also made in support of the PP:

1. Lot width is considered critical to ensuring good design outcomes, as it determines the prevailing form of the streetscape. This is explained in further detail in Part 3C of the draft Planning Proposal report (**Attachment 1**). Further to this point, the proposed lot width controls are essentially carried over from the LRHD Code. This ensures a consistent response to the issue under both full DA and CDC processes.

2. The need to better control design outcomes is a key factor behind this draft PP. While lot width is critical to the future form of a streetscape, lot size is instrumental to built form on a site, particularly under the LRHD Code where a sliding scale of gross floor area allowance is applied based on lot size. As explained in Part 3C of the draft Planning Proposal report (**Attachment 1**), when developed for Dual Occupancies under the Code, sites smaller than 500 sqm will infill the full extent of the allowable site envelope. Development under the default Code controls will therefore result in excessive bulk that is at odds with the more traditional suburban elements of the LGA.

3. There is a need for lot size and width controls on the former Botany Bay LGA side. The absence of these controls leaves Council reliant on LEP building height and FSR controls, as well as DCP setback, landscaping and parking controls, to manage built form outcomes on this side of the LGA. Over-ambitious proposals consume a disproportionate amount of time in the DA assessment process and don't always result in great outcomes, if a compromise is even negotiated eventually.

4. Further to Point 1, although already established under the LRHD Code, the minimum lot width requirement of 15m (for lots with a single, primary road frontage) places a

significant limitation on lot supply, particular on land within the former Botany Bay LGA. Zoning maps included at **Attachment 6** illustrate the degree of change to the size of Bayside LEP 2021's R2 zone, when factoring in both this lot width requirement and other requirements under the LRHD Code.

Taking these factors into account, Council considers the forecast take-up under the PP acceptable because it will deliver far superior quality and amenity.

Other Considerations

A review of relevant urban design considerations has been undertaken with the assistance of a Registered Architect in order to determine the most appropriate minimum lot size and frontage width controls for different parts of Bayside LGA's R2 zone. This is explained in more detail in the draft Planning Proposal (**Attachment 1**).

Bayside Local Planning Panel

The draft PP was considered by the BLPP at its meeting on 26 May 2022. The minutes of this meeting are included at **Attachment 7**. The following advice was provided to Council:

1. *The Bayside Local Planning Panel recommend to Council that pursuant to s3.33 of the Environmental Planning and Assessment act 1979 (EP&A Act), that the draft Planning Proposal – Minimum Lot Sizes for Dual Occupancies and Semi-Detached Dwellings be submitted to the Department of Planning and Environment for a Gateway Determination.*

2. *The Bayside Local Planning Panel recommend to Council that the Rockdale Development Control Plan 2011 and Botany Bay Development Control Plan 2013 be reviewed concurrently with the draft Planning Proposal, to ensure consistency between controls contained in these documents and the draft Planning Proposal.*

3. *The Bayside Local Planning Panel recommend to Council that should a Gateway Determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway Determination and to provide details of any submissions received throughout that process.*

4. *The panel notes and is in support of the draft Planning Proposal – Minimum Lot Sizes for Dual Occupancies and Semi-Detached Dwellings be submitted to the Department of Planning and Environment for a Gateway Determination, however, the panel suggests the LEP clauses be simplified, and the construction of that section to make it clear there are only two models and simply specified the lot size and frontage requirements for each of the two models (i.e., Model One - 15m frontage and 600 sqm lot size requirement & Model Two - 12m frontage and 500sqm lot size requirement).*

Council officers welcome the BLPP's support for this draft PP. With regard to Item 4 of this advice, Council officers acknowledge the BLPP's suggestion that the proposed new clauses be better simplified and are open to discussing a more simplified approach with Parliamentary Counsel in the final drafting stage (should the draft PP progress). As outlined in the DPE's LEP Making Guideline (December 2021), at this early stage in the process, it is sufficient for the draft PP to contain an explanation of provisions that are to be included in the proposed LEP amendment.

For this draft PP, suggested clauses are included in order to adequately describe how the proposed LEP amendment may capture all possible development eventualities covered in this draft PP (including DAs for construction and/or subdivision). However, these suggested clauses are subject to potential future changes, requested by the DPE at Gateway stage, or by Parliamentary Counsel at the final draft stage. Council officers are satisfied with the level of detail contained in the draft PP's explanation of provisions, and do not propose any changes in response to the BLPP's advice.

In its comments, the BLPP also advised Council to consider having the same controls criteria for Torrens Title and Strata Subdivision, to ensure a consistent approach. This advice is noted but Council officers also note that there are a number of examples of similar clauses that apply to subdivision of land in other LEPs that do not contain distinct provisions for Torrens Title and Strata Subdivision. The draft PP seeks to follow a similar approach to these examples. No changes are required in response to this comment.

Conclusion

The primary purpose of this draft PP is to respond to Actions 3.6 and 6.1 in the Bayside LHS, by introducing minimum lot size and frontage width controls for Dual Occupancies and Semi-Detached Dwellings in the Bayside LGA's entire R2 zone within the BLEP 2021. In doing so, the draft PP will more appropriately guide built form outcomes in areas where this guidance is most urgently needed, through both CDC's against the LRHD Code, and assessment of Development Applications against the BLEP 2021.

Next Steps

Submit PP to DPE for Gateway	August 2022
Receive Gateway Determination and address any conditions	October 2022
Report to City Planning & Environment Committee (CP&EC) for endorsement to exhibit proposed DCP amendments	November 2022
Council to consider recommendations of CP&EC for exhibition of DCP amendments	November 2022
Concurrent Exhibition of PP and proposed DCP amendments	December 2022 - January 2023
Assessment of submissions	January 2023 - February 2023
BLPP meeting to consider post-exhibition report on PP	February 2023
CP&EC meeting to consider post-exhibition report on PP & DCP amendments	March 2023
Council to consider recommendations of CP&EC for finalisation of draft LEP and adoption of DCP amendments	March 2023
Submit final draft LEP for notification	March 2023

Financial Implications

Not applicable ☒

Community Engagement

The draft PP will be exhibited, subsequent to receiving a Gateway Determination, for a period of 28 days in accordance with the provisions of the *EP&A Act 1979,* the *Environmental Planning & Assessment Regulation 2000,* the Bayside Community Participation Plan and any requirements of the Gateway Determination.

Public exhibition of the draft Planning Proposal will include:

- Community engagement project set up on Council's 'Have Your Say' website
- Written notification to all affected landowners and residents of those properties that would be affected by a proposed change in the planning controls
- Letters to State and Commonwealth Government agencies identified in the Gateway Determination.

Attachments

1 Attachment 1 - Draft Planning Proposal (Under separate cover Attachments Part One) ⇨
2 Attachment 2 (Appendix A of Draft PP) - Council resolution endorsing Local Housing Strategy - 10 March 2021 (Under separate cover Attachments Part One) ⇨
3 Attachment 3 (Appendix B of Draft PP) - Bayside Local Housing Strategy - DPE Letter of Approval (Under separate cover Attachments Part One) ⇨
4 Attachment 4 (Appendix C of Draft PP) - Planning Proposal Map of Area A (Under separate cover Attachments Part One) ⇨
5 Attachment 5 (Appendix D of Draft PP) - Analysis of Historical and Forecast Supply (Under separate cover Attachments Part One) ⇨
6 Attachment 6 (Appendix E of Draft PP) - R2 Zone Comparison Maps (Under separate cover Attachments Part One) ⇨
7 Attachment 7 - Bayside Local Planning Panel Minutes - 26 May 2022 (Under separate cover Attachments Part One) ⇨

City Planning & Environment Committee 10/08/2022

Item No	CPE22.024
Subject	**City of Botany Bay s.94A Development Contributions Plan 2016 - Draft Amendment - Botany Aquatic Centre**
Report by	Maritza Abra, Coordinator City Design
File	SF22/2606

Summary

It is proposed to amend the City of Botany Bay s.94A Development Contributions Plan 2016 to reflect the most recent estimate of works in the Plan's Work Schedule for the Botany Aquatic Centre project to assist in the delivery of this project.

Officer Recommendation

That Council endorse City of Botany Bay s.94A Development Contributions Plan 2016 – being amended to update the current cost of the Botany Aquatic Centre project and the amendment be placed on public exhibition for 28 days.

Background

The City of Botany Bay s.94A Development Contributions Plan 2016 (The Plan) became effective on 22 June, 2016. The Work Schedule in the Plan outlines the projects that the Plan intends to fund using developer contributions collected under the Plan.

The Botany Aquatic Centre project is a major council initiative and is intended to meet the needs of the existing and future population. The upgrade of Botany Aquatic Centre is included in the Work Schedule with an estimated cost of $28.145, which was calculated when the Plan was drafted. The plan allows 31% of the cost of the project to be funded from the Plan. An extract from the Plan is set out below:

RECREATION FACILITIES			
OS91 Botany Aquatic Centre	Redevelop centre including enclosed pools, water play, dry leisure facilities, gym, crèche, wellness facilities, car park and refreshment services; irrigation; master plan	**$28,145,000**	L
Sub-total		**$28,145,000**	

Current Situation

The cost of the Botany Aquatic Centre upgrade project has increased significantly since the Plan was prepared. There have been particularly sharp increases in the cost of construction over the last 12 months due to various world economic disruptions. The current estimate for

the entire project (stages 1 and 2) is $53,545,972 (ex GST). The increase in the estimate was reported to City Works Committee of 8 June, 2022 and to Council 22 June, 2022.

Proposed Amendment

Clause 2.15 of the Plan envisages that infrastructure or land costs will change in a manner different to the consumer price index and consequently will need to be adjusted from time to time. Therefore Council can review the Plan as required *"so as to ensure that the Plan remains financially sustainable, addresses the demands generated by development and so that facilities can be provided in a reasonable time".*

While the contributions paid by developers are indexed and interest is earnt on funds collected, the cost of projects set out in the Work Schedule in the Plan is not indexed. In order for the Plan to contribute an amount that reflects the actual cost of the project, it is proposed to amend the project cost in the Work Schedule in the Plan to $53,545,972.

Attachment 1 contains a table showing the parts of the Plan that would need to be amended.

Contributions Pooling

Clause 3.14 of the Plan authorises for levies paid for different purposes within the Plan to be pooled and applied progressively to priority projects.

Council has prioritised the Botany Aquatic Centre project, and the pooling of funds for this purpose will not ultimately prejudice the implementation of other projects within the Works Schedule. There is a sufficient total balance in the Plan to fund Botany Aquatic Centre at 31% of $53,545,972 if funds are pooled.

Amendment Process

If approved, the proposed amendment to the Plan will be exhibited for 28 days in accordance with cl.213 of the EP&A Regulations 2021. Any comments received during exhibition will be considered and incorporated in a final draft submitted to a future Council meeting for adoption.

Once adopted, the plan must be published on the Council Website within 28 days after the decision is made in order to become effective.

Financial Implications

Not applicable	☒	The amendment will facilitate delivery of the Botany Aquatic Centre upgrade.
Included in existing approved budget	☐	
Additional funds required	☐	

Community Engagement

The revised contribution plan is required to be exhibited for 28 days in accordance with the Environmental Planning and Assessment Regulation 2021.

Post exhibition, the revised Plan will be reported back to Council to consider adoption.

Attachments

Table of Changes to City of Botany Bay S94a Development Contributions Plan 2016 ⇩

City of Botany Bay - S94a Development Contributions Plan 2016

Table of proposed changes

Item No	Page	Paragraph	Original Wording	New Wording
1	Cover	1	City of Botany Bay S94A Development Contributions Plan 2016	City of Botany Bay S94A Development Contributions Plan 2016 – Amendment 1
2	Cover	2	Approved on 14 June 2016 Effective from 22 June 2016	Approved on (date to be confirmed – Council meeting date) Effective from 22 June 2016
3	3	Paragraph 5		This Plan originally came into effect on 22 June 2016. Amendment 1 includes an update to the cost estimates for work schedule items. Amendment 1 came into effect on xx xxxx xxx.
4	30	Table – item Recreation Facilities (Note update of estimated cost only at item and sub-total)	$ 28,145,000	$ 53,695,972

City Planning & Environment Committee 10/08/2022

Item No	CPE22.025
Subject	**Draft Community and Verge Gardens Policy**
Report by	Clare Harley, Manager Strategic Planning Charlotte Lowe, Acting Co-ordinator Policy and Strategy
File	F13/160.002

Summary

In response to occassional requests from the community to use Council land for gardens and instances where regulatory action has been necessary to address inappropriate use of Council land, a draft Community and Verge Gardens Policy has been prepared for consideration. The Policy aims to provide a clear roadmap for the community and Council to develop and manage community and verge gardens on Council or Council managed land.

Officer Recommendation

1 That the Draft Community & Verge Gardens Policy (Attachment 1 to this report) be placed on public exhibition and that community feedback be sought.

2 That a post exhibition report on submissions, feedback received and any amendments to the Policy be provided to the City Planning & Environment Committee and Council.

Background

Community and verge gardens (i.e. gardens in the nature strip between roads and private property) provide local residents with recreational opportunities and a range of other environmental, social and educational benefits that can contribute to the health and well-being of individuals and the wider community.

There is a need to manage the benefits against the risks that can be created through the use of public land for these purposes. The policy aims to achieve this balance.

The Draft Policy

A draft Community & Verge Gardens Policy has been prepared to provide a clear roadmap for the community and Council to develop and manage community and verge gardens on Council or Council managed land. The Policy outlines:

- the types of gardens that may be supported by Council;
- where they can be located;
- ongoing roles of Council and the public in managing the gardens;
- approval processes; and
- conflict resolution and complaints management.

The use of Council owned or managed land for any purpose requires a balance to be struck between the interest of an individual or group, the broader community interest. As owner of the land, Council must consider the risk associated with private use of its land, as it can be left liable for maintenance, claims for injury, pollution and reinstatement cost. The policy aims to realise the benefits outlined in the background above without creating outcomes that are unsightly, unsafe or that disadvantage other members of the community or Council.

The Policy does not cover the activities of Council or contracted land management activities on its land, as they are covered by relevant Acts and Regulations.

Financial Implications

Not applicable	☒
Included in existing approved budget	☐
Additional funds required	☐

Community Engagement

The draft Community & Verge Gardens Policy will be placed on public exhibition for 28 days and community feedback will be sought via Councils Have Your Say webpage.

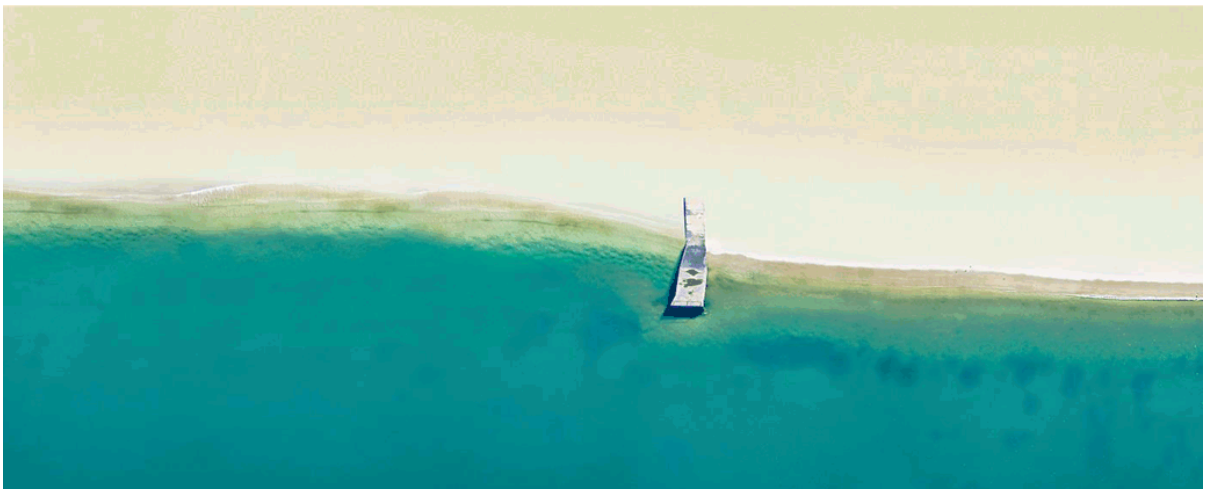
Attachments

Draft Community & Verge Gardens Policy ⇩

Bayside Council
Serving Our Community

Community & Verge Gardens Policy

Draft



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Community Gardens Policy
File: F13/160 Document: 17/34873[V2]
Policy Register: F16/951 Policy No.:
Class of document: Council Policy

Enquiries: Manager Strategic Planning

Telephone Interpreter Services - 131 450 Τηλεφωνικές Υπηρεσίες Διερμηνέων خدمة الترجمة الهاتفية 電話傳譯服務處 Служба за преведување по телефон

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1 Introduction

1.1 Background

Community and verge gardens provide local residents with recreational opportunities and a range of other environmental, social and educational benefits that can contribute to the health and well-being of individuals and the wider community.

The opportunities and values represented by community and verge gardens are informed by the Community Strategic Plan 2030.

- Our places are accessible to all
  - Open space is accessible and provides a range of active and passive recreation opportunities to match our growing community
  - Bayside provides safe and engaging spaces, places and interactions
- The community is valued
  - We are a healthy community with access to active recreation and health education
  - All segments of our community are catered for – children, families, young people and seniors
  - Opportunities for passive and active activities are available to community members

1.2 Definitions

Community Gardens
For the purposes of this policy a community garden is defined as a not-for-profit, community based enterprise producing food primarily for the consumption of the gardeners. Community gardens are also places for learning and sharing about sustainable living practices and for actively building communities through shared activities.

There are several models of community gardens in existence throughout Australia, Bayside Council supports the following models:

- Gardens that include a shared area plus allotments for each member;
- Gardens where the entire area is managed collectively

Verge Gardens
The verge is the Council owned land between the constructed road and private property. Street verge gardening is the practice of growing ornamental, native or edible plants on the verge. Verge gardens can be either managed collectively by a group of residents or by an individual household.

1.3 Policy statement

Council is committed to providing a clear roadmap for the community and Council to develop and manage community and verge gardens in the Bayside local government area (LGA). This Policy outlines the types of gardens that may be supported by Council, where they can be located and the ongoing roles of Council and the public in managing and nurturing community and verge gardens.

1.4 Scope of Policy

This Policy covers activities related to 'gardening' by community members on Council or Council managed land and does not include the activities of Council or contracted land management activities.

2 Community Gardens - Establishment

2.1 Planning

Establishing a community garden can be a complex process. Therefore, a clear process for development and management of a community garden and clear roles and responsibilities are needed. All community gardening activities covered by this Policy must satisfy the following requirements to allow establishment and ongoing use.

Council encourages resident groups to contact Council early in the planning process and to review the many excellent resources available regarding community gardening including '10 Steps to Starting a Community Garden' on the Australian City Farms and Community Gardens Network website and the City of Sydney's 'Guide to Getting Started in Community Gardening' available on the City of Sydney's website.

Application forms and a checklist for starting a community garden are available on Council's website.

2.2 Where community gardens can be established

For the purposes of the Policy, community gardens supported by Council can only be located on Council owned or managed land and be managed only by an authorised group of local residents. All community gardens established on Council land require an approval from Council.

Not all Council land or open space is suitable for community gardening and the following areas are excluded from community garden applications:

- Cook Park
- Areas mapped as endangered ecological communities
- Some areas mapped as contaminated land following assessment by Council
- State Roads and reserves adjacent to State Roads
- Median strips and roundabouts.

2.3 Park Plans of Management

Council has Plans of Management (POM) for many parks and open space areas. Community gardening activities that occur in an area with an existing POM must be consistent with this Plan. Where relevant, Council incorporates community gardens into plans of management as 'community land'.

2.4 Establishing Community Garden Groups

Community gardens come in many shapes and sizes and the groups that manage them are just as varied, encompassing a range of ages, skills and experience. To ensure community gardens are managed effectively, groups need to develop and

adhere to a set of rules agreed to by both Council and the garden group. For larger groups this requirement means the development of a management plan; for smaller groups it may be a simple licence agreement.

Larger community garden groups must become incorporated through the NSW Office of Fair Trading. Incorporation allows garden committees to open a bank account, obtain public liability insurance and apply for government grants. To become incorporated garden groups must first establish a management committee with annually elected office bearers and commit to regular meetings. Appropriate governance arrangements ensures; good management of the garden where issues are addressed in a timely and transparent manner, tasks are shared thereby avoiding excessive responsibility being placed on a few people or the garden becoming dominated by one person or faction.

2.5 Insurance and Risk Management

It is essential that community garden groups be aware of the risks associated with undertaking publicly accessible community gardens and that garden groups have a duty of care to community members who visit gardens. As such, all community garden management plans are required to include a risk assessment.

To ensure risks are financially covered, each garden and its members must be covered by public liability insurance of at least $20,000,000. Council recognises that there is a cost associated with obtaining public liability insurance and provides the following options for obtaining insurance cover:

- Council community grant or other grant
- Fundraising
- Garden membership fees
- A partnering organisation or agency that can extend their policy to cover the garden
- A group of community gardens with similar objectives might obtain insurance together
- Purchasing a policy through incorporated groups such as Garden Clubs of Australia

2.6 Financial Sustainability

Long-term financial viability is critical for the success of any community garden project. While Council has a community grants program that can be applied to for the purposes of community gardens, gardens should be planned so that they are not dependent on grants or sponsorship. Financial sustainability must be demonstrated in the garden's management plan and may require, as is the case for several community gardens in other Sydney council areas, an annual membership fee.

During the building of a community garden, Council may, at its discretion and subject to budgetary constraints, fund the following materials and activities:

- Raised garden beds
- Recycling, worm farming and composting facilities and associated infrastructure
- Fencing
- A limited supply of soil, compost, mulch and tools
- Public signage and educational materials
- Soil contamination testing

2.7 Conflict Resolution and Complaints Procedure

Community Gardens should aim to be tolerant and caring environments. However, it is inevitable that conflicts arise, either within the garden group or with external stakeholders such as local residents or Council. Council therefore recommends that all community garden management plans include a gardener's agreement and a conflict resolution process that provides expectations of behaviour that all members must sign and agree to follow. Garden groups of less than 12 twelve members that do not have a garden management plan, are be required to sign individual gardener's agreements with Council.

2.8 Occupation Agreement

New community gardens that have been approved by Council will be granted an initial permit for a trial period of 12 months, which will accrue no occupation fee for the trial period. If the garden group or individuals fulfil their responsibilities with regard to the management of the garden within the first year, another permit may be negotiated. All permits issued after the 12 month trial period incur an annual administration fee, listed in Council's 'Fees & Charges'. The permit or any other occupation agreement granted between a community garden group (or individual entities) and Council may be revoked or not renewed if:

- The community garden group disbands or ceases to function
- Individuals or the community garden group fail to fulfil their agreed responsibilities as outlined in this policy and/or the permit issued
- The garden is not maintained or becomes unsafe for public access
- Appropriate insurance cover is not maintained
- If any relevant Act, Regulation or environmental code is breached.

2.9 Use of the Gardens as Demonstration Sites

Council's vision of community gardens includes promotion of the gardens as demonstration sites for sustainable living. As such Council, while ensuring that garden activities are not disrupted, retains the right to use community gardens for community education events such as tours and workshops. Council would, therefore, encourage community garden groups to include sustainable practices such as recycling, organic/permaculture gardening principles as well as outdoor learning, performance, meeting spaces and interpretative signage in their plans of management.

3 Community Gardens – Roles and Responsibilities

3.1 Council

Council provides the following support to community garden groups:

- A staff member who acts as a point of contact for all members of community gardens
- Assessment of garden proposals and management plans
- Provision of initial advice on design and maintenance of gardens
- Assistance with establishing worm farms and composting facilities.
- Connecting local gardens and gardeners to each other to help build relationships and encourage the sharing of information and experiences.

- Promotion of community gardening through Council's website, publications and events.
- Determination of potential breaches of permits and revocation of individual or group agreements if breaches have occurred.

Council is not in a position to provide the following services or resources;

- Ongoing administrative support (e.g. photocopying, promotion)
- Care of garden group finances
- The provision of large infrastructure (e.g. sheds, rainwater tanks, sun shelters)
- The ongoing provision of plants, seeds, soil or mulch, tools or other equipment
- The repair or replacement of damaged, lost or stolen infrastructure and equipment
- The development or hosting of any internet based platforms for group communications and promotion, e.g. websites, blogs, wikis
- Ongoing financial support.

3.2 Garden Groups

Community gardens should be initiated and managed by community members for the long term, taking into account the needs of all stakeholders and the surrounding community. Specifically gardeners are responsible for ensuring that:

- They maintain effective relationships with the surrounding neighbourhood, partnering organisations and gardener members
- Garden group members and visitors to the garden are not to be discriminated against due to differences in race, gender, culture or sexuality
- Decision-making by the garden committee is democratic, transparent and inclusive
- The garden is managed in such a way that water contaminated by sediment, fertilisers etc. is contained on site
- Garden activities that may incur noise, dust etc. do not disturb neighbours
- Compost, worm farms and garden materials are maintained so as not to attract vermin or produce unpleasant odours
- Rainwater harvesting systems are maintained to ensure water is of a high quality
- Lawn areas are regularly mowed and garden beds kept tidy
- Visitors are welcomed during daylight hours.

Community gardeners have the right to:

- Develop their own internal policies, organisational procedures and management plan providing they liaise with and get support from Council
- Be consulted with regard to any decision that may affect the garden and to be advised by the Council in a timely manner of any policy changes that impact them
- Be treated with respect by other gardeners, local residents and partnering organisations
- Negotiate a secure and reasonable agreement with Council.

4 Community Gardens – Site Selection

In order for Council to consider supporting the development of new community gardens on Council owned or managed land, applicants need to address the site selection criteria outlined below and follow the procedure for establishing a new community garden. The first steps in this procedure are to establish a community

garden group, conduct a site assessment of potential sites and then discuss the proposal with the Council to identify possible issues. Once a preferred site has been established, applicants need to submit a completed application form to Council. If the application is supported, Council then organises community consultation with local residents and works with the community garden group to address any concerns.

1 Location: Sites classified as Community Land under the Local Government Act such as parks, open space and community centres that have outside areas may be appropriate for community gardens. Priority is given to sites located in high density areas and/or near community centres or community organisations that might be able to support or partner the project.

2 Safety: Sites should have no major safety or health concerns; and have good passive surveillance (for example, can be easily seen from nearby houses or shopping areas).

3 Accessibility: Sites should be accessible for a range of user groups, located close to public transport and allow disabled and vehicular access e.g. for delivery of mulch and soil.

4 Solar access: To be suitable for growing fruits and vegetables potential garden sites need to receive full sunlight for at least 5 - 6 hours per day.

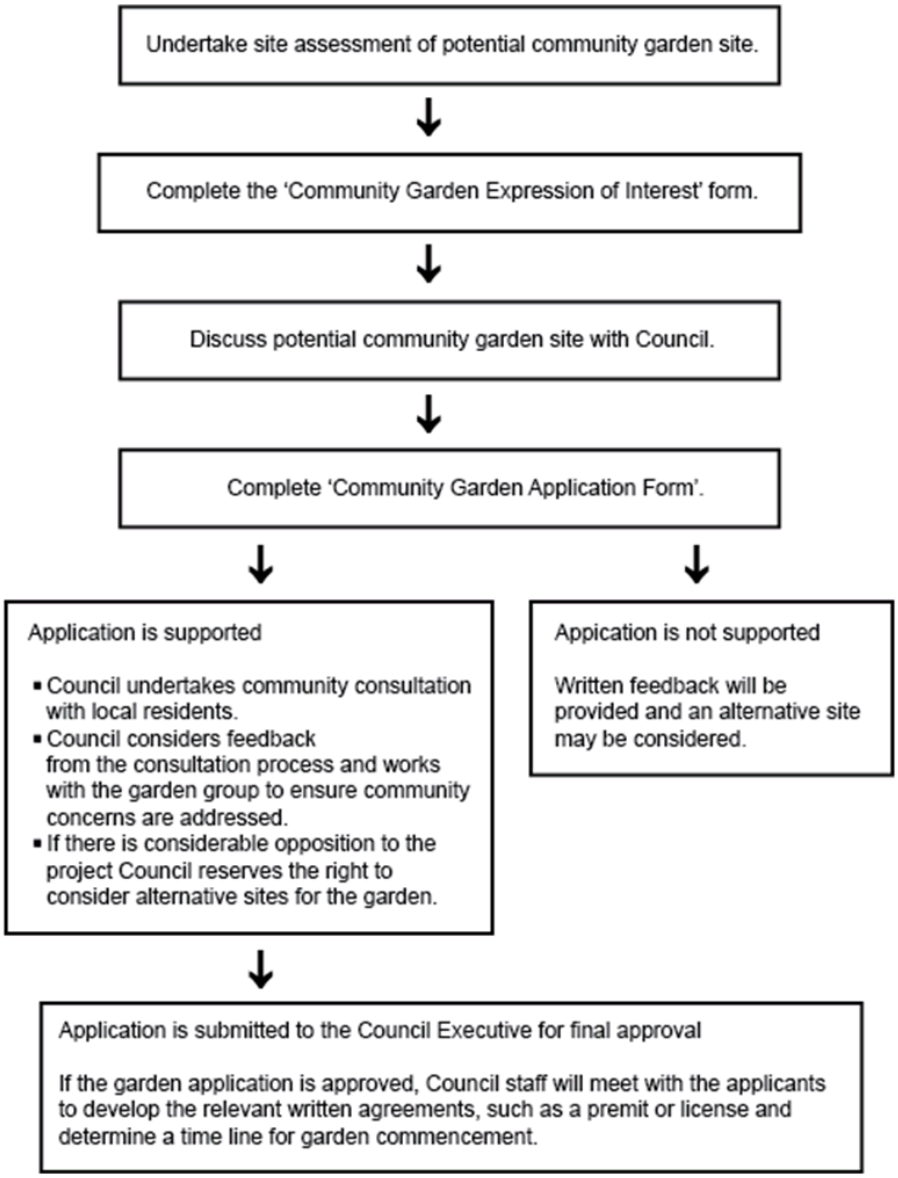
5 Size: The selected site needs to accommodate all members in the community garden group. Large garden groups therefore need to be located at a site that can accommodate the appropriate number of garden beds with room for storage and composting systems. Space for rainwater tanks, seating areas, shelter for gardeners and for community workshops and demonstrations may also need to be considered. Smaller garden groups may be able to utilise verges or pocket parks that can support few garden beds with storage and composting off-site.

6 Water: Sites need to have access to reticulated water or access to buildings where water can be harvested.

7 Soil Contamination: Contaminated land is an issue across the entire Bayside Council area. As such garden beds within the community garden that are to be used for growing edible plants must be raised and self-contained (with enclosed bases so there can be no movement of moisture from the potentially contaminated ground surface into the garden bed). The garden beds must be filled with clean soil (soil bought from a landscaping supplier and not sourced from the garden site).

8 Multiple Use: Priority is given to sites where a community garden can be integrated without conflicting adversely with other land uses and where the community garden can still be used by non-gardeners for passive recreation and educational workshops.

5 Community garden – Approval Process



6 Verge Gardens

6.1 General

Verge gardens, like community gardens can offer a range of benefits to individuals and the community through connections between neighbours and mental and physical health benefits. Additionally well designed and maintained verge gardens can:

- Improve the water efficiency of verges
- Contribute to beautiful streets
- Reduce urban heat island effects
- Provide ecological and social benefits

6.2 Where are verge gardens permitted?

Not all streets are suitable for verge gardens. In the Bayside local government area verge gardens are not permitted on:

- Collector and State roads*

Or on streets with or close to the following:

- Hospitals, schools and shopping centres
- Town centres and
- streets with timed parking or parking restrictions

*Collector and State roads can be identified by visiting Council's 'Online Maps' web page, and clicking on the 'Property and Wards' link. Collector and State roads are coloured yellow.

6.3 Small verge gardens

Residents proposing to install small verge gardens that comply with the description below, can install a verge garden once they have completed and returned to Council the 'Small Verge Garden Checklist' found on Council's website and attached a copy of their public liability insurance certificate that includes reference to the verge garden.

- Maintained turf
- Low shrubs and groundcovers not higher than 100cm
- Organic mulch, less than one third of the verge area and 1.5m away from the trunk of a street tree
- Garden edging at ground level that does not present a trip hazard.

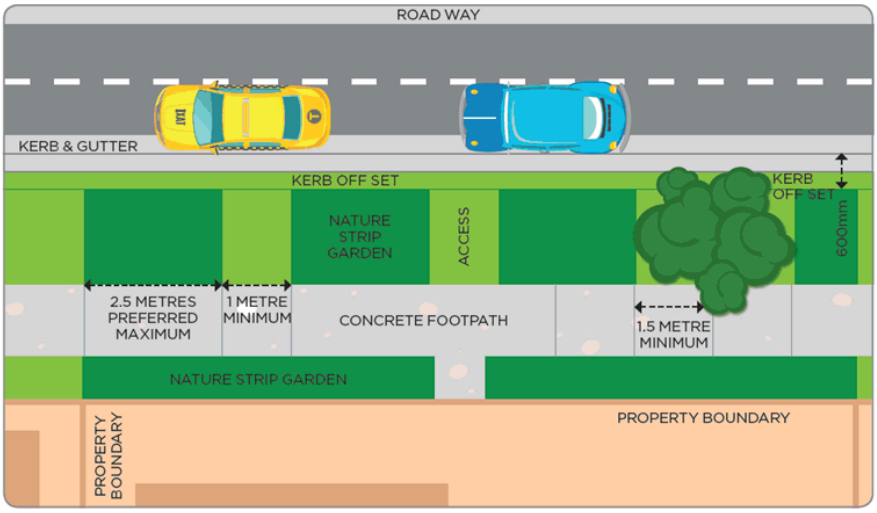


Figure 1: Small verge garden preferred set out.

6.4 Verge gardens requiring approval

Residents proposing to create verge gardens that contain any of the materials listed below, need to complete an application form and receive written approval from Council prior to installation of the verge garden:

- Temporary structures such as bollards or garden ornaments
- Raised vegetable planters
- Furniture including seats and benches
- Paving and/or consolidated inorganic mulch
- Vegetation higher than 1m.

Where a resident proposes to include raised planter boxes in their verge garden the following requirements must be adhered to;

- Planter boxes are required to be installed on firm level natural surfaces to allow for effective drainage.
- All planter boxes must have a weed mat or geofabric layer at the base to form a separation barrier between the existing site soil and the imported growing medium.
- The planter box must be free of sharp edges, nails or any overhanging material which may impede the footpath or cause injury to pedestrians.
- No structures or ornaments are permitted within your planter box;

Planter boxes are required to meet the following set-out requirements;

- Where there are multiple planter boxes proposed, they must be positioned to ensure an uninterrupted 1m clearance between each planter.
- A clear distance of 300mm minimum is to be maintained between the edge of the footpath and the planter box;
- Planter boxes are not suitable for verges narrower than 2 metres (excluding the footpath);

- A minimum of 1m is to be maintained between planter boxes and any driveway edge.
- Council only permits two types of planter boxes, steel planter boxes or treated pine (planter boxes similar to the planter boxes shown in Figure 3.

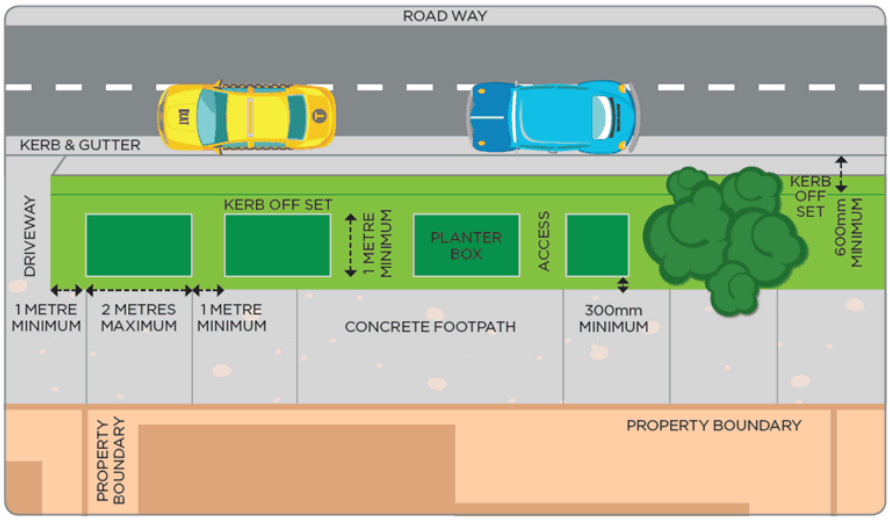


Figure 2: Verge garden including planter boxes preferred set out.

Figure 3: Acceptable planter box types

6.5 Basic requirements of all verge gardens

Where a verge garden is permitted, the householder responsible must ensure the garden does not pose a risk to the community. Residents proposing to install a verge garden must ensure they can meet the following:

- Gaps in vegetation to allow ingress and egress from parked vehicles at least every three metres
- A l.5m wide footpath is maintained at all times
- All plantings are at least 300mm from the kerb edge
- The visibility of traffic signs is retained (Council can at any time decide to install or change the location of traffic signs as the need arises)
- Site lines from driveways and around corners are not obscured
- No plantings within 500mm of a power pole

- No vegetation over 1m is planted within 10m of No Stopping signs
- No vegetation over 1m is planted under electricity overhead wire lines
- You have consulted with your neighbours about your proposed verge garden and have their support
- Your verge garden is included on your household public liability insurance $20,000,000 – refer the Insurance section below.
- If you are renting in the residence associated with the verge garden, you have obtained consent from your landlord prior to installing a verge garden and ensured that the garden is included on the owner's public liability insurance.

6.6 Verge garden materials that are unacceptable

The activities and materials listed below constitute a hazard and are not permitted to be included in verge gardens. If these materials are found within a verge garden, they must be removed on the request of Council or appropriate compliance action will be taken and the materials removed at the owner's expense:

- Raised garden edging
- Listed weeds, as defined by the Department of Primary Industries www.weeds.dpi.nsw.gov.au
- Spiky plants
- Stakes
- Guide wires
- Irrigation systems
- Any materials or structures that are unsafe, block sight lines, are loose or slippery, present a hazard, are impermeable or are sharp are an unacceptable.
- Changing the level of the verge, either fully or partially, is also not permitted.

6.7 Who is responsible for verge gardens?

The householder is responsible for the continued maintenance of a verge garden adjacent to their property. Verge gardens are planted in public spaces and priority must always be given to access for pedestrians, ingress and egress from parked cars, postal and other utility services. If adequate access is not provided, householders may be asked to remove or make changes to their garden.
In the event that you move into a residence with an established verge garden, it is your responsibility to ensure that the verge garden complies with this Policy or remove the garden and reinstate the verge to the standard of the surrounding surface.

Council is not responsible for reinstating any landscaping or any damage to verge gardens or their contents, caused by animals, persons, weather events or works by utility service providers. Utility service providers (e.g. electricity, water or telecommunications) may need to upgrade or maintain their infrastructure at any time. Utility service providers will not normally reinstate verge gardens after works are completed.

Council is responsible for planting, removing and maintaining all street trees on the street verge and reserves the right at any time to alter or remove any verge garden and landscaping.

6.8 Insurance

Applicants are encouraged to include their verge garden on the householder's public liability insurance policy.

Residents are reminded that the creation and installation of verge gardens are done at the resident's own expense and own risk. While this Policy has been developed to manage public liability risks, it does not prevent a third party from making a claim against the resident for any injury, loss or damage caused by a verge garden.

6.9 Conflict Resolution and Complaints

Verge gardens should add to the amenity of the streetscape and be supported by neighbours and the community. Prior to seeking approval to install a verge garden, the householder should consult with neighbours and obtain their support to install the garden. However it is still possible that differences relating to a verge garden may arise. It is the responsibility of the resident who created the verge garden, to resolve those issues. Council will only intervene where a verge garden is non-compliant.

Where specific concerns are raised about a verge garden that predates this Policy, or where an issue cannot be resolved between neighbours, Council Officers will inspect the verge garden and determine on a case by case basis if works are necessary to modify the existing verge garden. This may result in Council directing a resident to modify their verge garden within a certain timeframe. If the resident fails to undertake the works, Council reserves the right to undertake the works and may seek to recover the costs associated with completing the works.

6.10 Breaches of the Policy or Approvals

If a verge garden contravenes any part of the approval granted, Council may direct the participating resident to remediate the verge garden so that it is no longer non-compliant.

If a verge garden poses an immediate and unacceptable risk or a participating resident does not comply with a previous Council direction to remediate a verge garden, Council may remove the verge garden.

Examples of the Guidelines being contravened include (but are not limited to):

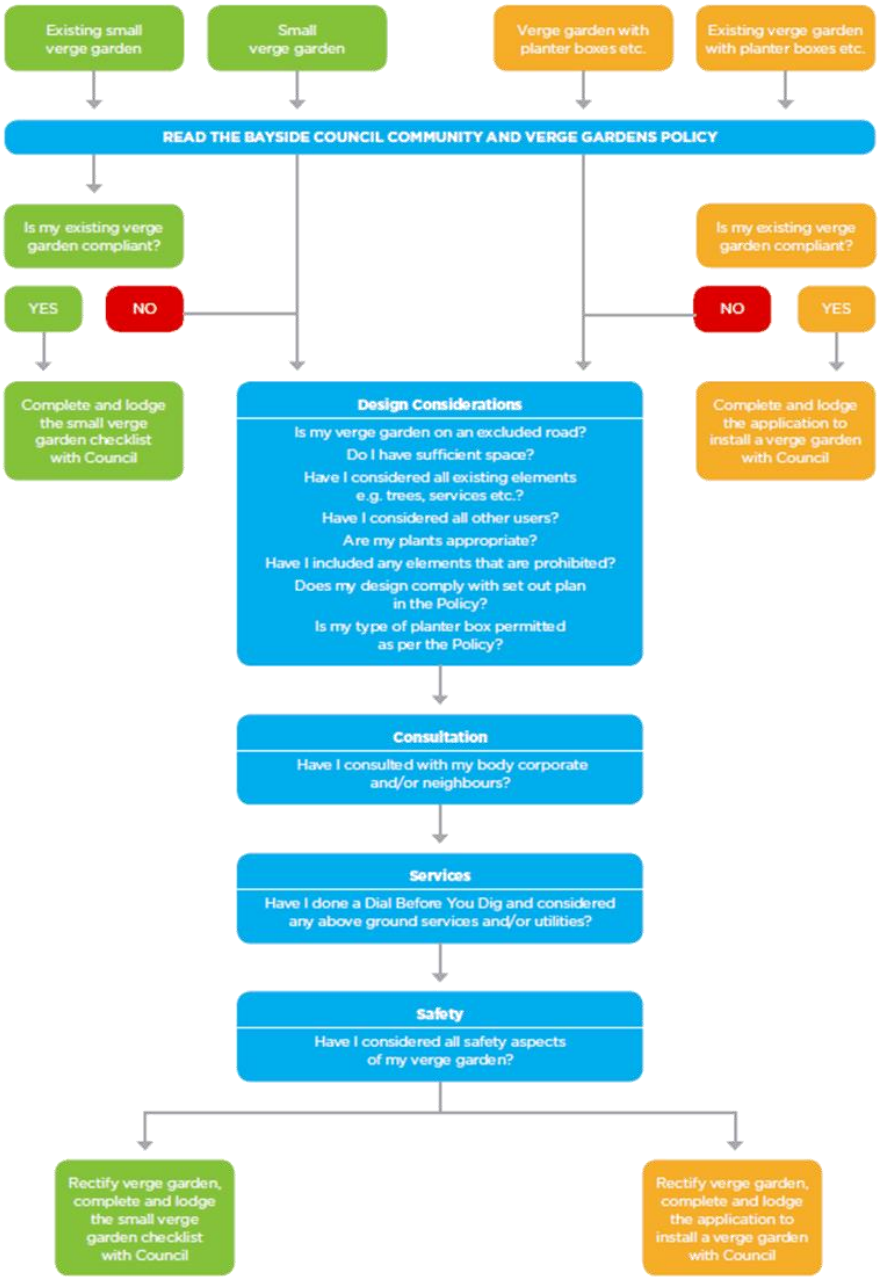
- obstructing the access or visibility of pedestrians and/or other road users;
- presenting a trip hazard to pedestrians and/or other road users;
- plants, branches or shrubs encroaching on a footpath or road;
- planting noxious, poisonous, thorny or otherwise hazardous plants; and
- allowing a verge garden to become neglected, unkempt or unsafe.

When determining whether to remove a verge garden, Council will take a balanced approach informed by an analysis of risks and benefits to the community including (but not limited to):

- likelihood of harm being experienced by someone as a result of the verge garden;
- the significance of harm potentially experienced by someone as a result of the verge garden;
- social and environmental benefits being delivered by the verge garden; and o the length of time in which the verge garden has existed.

Council reserves the right to remove or modify a verge garden (in whole or part) in order to undertake any future infrastructure or maintenance work (including street tree planting). Any cost associated with restoring the verge garden to its prior state will be borne by the resident with the responsibility to maintain the verge garden.

6.11 Verge Garden Approval Process



7 Policy implementation

7.1 Policy responsibilities

Manager Strategic Planning is responsible for the policy substance in this document.

Manager Strategic Planning is responsible for the assessment of community garden proposals, and providing advice on verge garden applications

General Manager (normally in Committee) is responsible for the approval or otherwise of community garden proposals.

Manager Compliance & Certification is responsible for the assessment, determination of verge garden applications, monitoring their implementation, and enforcement of approval conditions.

7.2 Procedures

Approved Community Gardens

All approved community gardens on Council owned or managed land, have an approved garden plan, application form and other relevant documents. The Council staff member responsible for managing community gardens, monitors the development and activities of approved community gardens and where non-compliant activities or elements are detected, the staff member responsible contacts the garden group to discuss and rectify the issue. This process is documented, including a statement of the issue, the resolution and when it was completed.

Where the issue cannot be resolved through an informal process, a formal letter is sent to the garden group outlining the issue including an agreed date for rectification. The community garden group is responsible for completing the rectification works.

If the community garden group refuses or fails to rectify outstanding issues within the agreed time frame, a second formal letter is sent to the garden group, with if necessary a new agreed time frame for rectification of the non-complying garden elements. Finally if compliance cannot be achieved, Council will send a third and final letter stating how and when Council will rectify the issue. This may include;

- Council removing the non-complying elements and charging the garden group for the expenses incurred
- Council cancelling the garden group's permit and Council taking over management of the garden
- Council cancelling the garden group's permit and demolition of the garden, again expenses may be charged to the garden group

Unapproved Community Gardens

Where an unapproved community garden is detected on Council owned or managed land, the Council staff member responsible for managing community gardens,

contacts the residents involved and proceeds with the approval process outlined in Council's Community Gardens Policy.

Where the approval process identifies non-compliant elements of the community garden, these must be resolved prior to lodging a formal application with Council. If the community garden group refuses to comply with the guidelines for an approved community the garden, the process in section 7.1 is followed. Once Executive approval has been granted to the community garden group, a permit may be granted.

Unapproved Verge Gardens

There are many verge gardens throughout the Bayside local government area that have been in existence prior to the implementation of Council's Community and Verge Gardening Policy, or were installed since, in ignorance of the Policy. Under the Policy, simple verge gardens of turf and/or low shrubs and groundcovers not higher than 50cm do not require approval, more complex verge gardens do require approval but no verge garden can contain materials deemed hazardous to the public. The list of hazardous materials is included in the Community and Verge Gardens Policy.

Residents who have installed a verge garden prior to or in ignorance of Council's Community and Verge Gardens Policy, are not required to apply for approval but any element of a verge garden that is deemed a risk to the public must be removed by the resident and the verge garden included on the residents public liability insurance certificate.

As Council staff become aware of extant verge gardens, they are inspected to determine if they pose a hazard to the public. Where hazardous materials are identified, the resident will be contacted by letter which contains the following;

- Identification of the hazardous materials
- Why removal is requested
- A timeframe for removal
- Who is responsible for removal (the resident) and
- That the resident must include the verge garden on their household public liability insurance and provide Council with a copy of the certificate of currency

If the resident refuses or fails to rectify outstanding issues within the agreed time frame, a second letter is sent, with if necessary a new agreed time frame for removal of the hazardous materials. Finally if compliance is still not achieved, Council will send a third and final letter stating how and when Council will rectify the issue. This may include;

- Council removing the non-complying elements and charging the resident for the expenses incurred

Approved Verge Gardens

All verge gardens containing elements such as raised garden beds, trees and other larger elements have an approved garden plan, application form and other relevant documents. Where non-compliant activities or elements are detected in a verge garden, the staff member responsible for managing community and verge gardens

contacts the resident to discuss and rectify the issue. This process is documented, including a statement of the issue, the resolution and when it was completed.

Where the issue cannot be resolved through an informal process, a formal letter is sent to the resident outlining the issue and an agreed date for rectification. The resident is responsible for completing the rectification works.

If the resident refuses or fails to rectify the outstanding issues within the agreed time frame, a second formal letter is sent to the resident, with if necessary a new agreed time frame for rectification of the issue. Finally if compliance is still not achieved, Council will send a third and final letter stating how and when Council will rectify the issue. The letter may include;

- Council removing the non-complying elements and charging the resident for the expenses incurred
- Council cancelling the resident's verge garden permit and demolishing the garden, again expenses may be charged to the resident

7.3 Breaches

The consequences for breaches of this policy are outlined elsewhere in this Policy.

8 Document Control

8.1 Review

This policy is to be reviewed at least every four years.

The Manager Governance & Risk may approve minor amendments that do not alter the substance of the policy.

8.2 Version History

Version	Release Date	Author	Reason for Change
1.0	14/06/2017	Madeline Hourihan	New document
2.0	TBA	Madeline Hourihan	Revision and addition of new section relating to verge gardens.

City Planning & Environment Committee 10/08/2022

Item No	CPE22.026
Subject	**Clause 4.6 Variations to Development Standards - Quarterly Report**
Report by	Dawson Heperi, Customer Relationship Analyst
File	SF22/1208

Summary

The Secretary of the Department of Planning & Environment delegates to councils assumed concurrence to use Clause 4.6 to vary development standards in Local Environmental Plans in the assessment and determination of development applications.

In accordance with Planning Circular PS 20-002, Councils must monitor the use of assumed concurrence and report to the Department on a quarterly basis. Councils are also required to update a register on their website and report variations approved under delegation to a meeting of the Council.

This report provides a list of variations approved under delegation for quarter four (4) of FY2022 to promote a transparent and accountable decision-making process.

Officer Recommendation

That the report on the use of Clause 4.6 of Council's Local Environmental Plans to vary development standards in the determination of development applications during quarter four (4) of FY2022 to be received and noted.

Background

Clause 4.6 in Bayside Local Environmental Plan 2021 allows Councils to provide flexibility in the application of development standards when assessing development proposals under certain circumstances. Clause 4.6 sets out a number of criteria that must be satisfied before a variation can be granted.

Reasons for varying development standards using clause 4.6 are detailed within the Development Assessment report for each development application, which can be found using Bayside Council's DA tracker. The property address or application number can be used to locate and view a particular application using DA tracker via Council's website.

There are four (4) procedural and reporting requirements set for councils in relation to the use of clause 4.6 to permit variations to development standards in the assessment of development applications. These are in place to ensure that the process is robust, consistent, transparent, and free from corruption:

- Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument.

- A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved (including under delegation) must be submitted through the NSW Planning Portal within four weeks of the end of each quarter (i.e. March, June, September and December) in the form provided by the Department.
- A report of variations approved under delegation is also to be provided to a meeting of the council each quarter.

This report is to satisfy dot point 4 of the reporting requirements for the Q4 FY2022 reporting period.

Financial Implications

Not applicable	☒
Included in existing approved budget	☐
Additional funds required	☐

Attachments

Development Variations Q4 2022 ⇩

Council DA reference number	Lot number	DP number	Apartment/ Unit number	Street number	Street name	Suburb/Town	Postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy
DA-2020/212	6, 1, 1, 2	176066, 907188, 656306, 773		1170-1176	Botany Road	Botany	2019	9: Mixed	Botany Bay LEP 2013	B2 - Local Centre	14 metres	•The proposal has been designed to redistribute gross floor area that would have been normally provided within the front and side setbacks. •Due to the heritage context of the area, greater street and side setbacks were required to be provided. •The additional height relates to the top floor, which has been setback 14 metres from the eastern boundary and will not be clearly visible when looking up from the street level. •The additional height does not create any additional negative amenity issues relating to solar and ventilation amenity on the neighbouring sites. •The height of the building is commensurate with other recent approvals with a similar height within close proximity of the site.	1.66 metres (11.9%)	Bayside Local Planing Panel	12/04/2022
DA-2021/499	21	1241805		69	Caroline Street	Kingsgrove	2021	12: Community facility	Bayside LEP 2021	R2 - Low Density Residential	0.5:1 FSR	•The proposal is for a toilet facility associated to an existing place of public worship, which will improve the amenity of the church to service the daily needs of the community and for users of the church. •There is no change to the existing streetscape and context of the area as the replacement toilets are located within the site (not visible from the public domain). •The proposal results in no difference to the streetscape and bulk and scale of the buildings viewed from the street are the same. •The exceedance in FSR does not impact on any adjoining buildings or residential properties with respect to solar access, views, open space, visual privacy or noise. •The proposed increase in FSR to 0.7374:1 (47.48% variation) is only an increase of 0.08% above the existing FSR and is considered minor. •The proposal complies with the objectives of the FSR development standard, has minimal adverse impacts on the use or enjoyment of adjoining properties and an appropriate visual relationship is maintained with the existing character of the area.	0.7374:1 (47.48%)	Bayside Local Planing Panel	12/04/2022
DA-2018/326/C	10	1003743		96-102	Princes Highway	Arncliffe	2205	4: Residential - New multi unit	Rockdale LEP 2011	B4 - Mixed Use	2.5:1 FSR	Will retain the same approved building envelope Consistent with the objectives of the control Consistent with future desired character Consistent with adjoining mixed-use developments Access to transport Minimal adverse impacts on the adjoining properties Suitable visual relationship with other developments Compliance is unreasonable and unnecessary	4.76%	Council Officer	28/04/2022
DA-2021/402	C	157427		45	Napoleon Street	Sans Souci	2219	2: Residential - Single new dwelling	Rockdale LEP 2011	R2 - Low Density Residential	8.5 metres	Consistent with objectives of the zone. Exceedance related to the lift overrun for access only. Minor variation to building height. Minimal adverse impacts to adjoining properties. Responds to the desired future character of the area	9%	Council Officer	18/05/2022
DA-2021/391	12	1137430		21	Ossary Street	Mascot	2020	11: Industrial	Botany Bay LEP 2013	B7 Enterprise Corridor	3.85:1 FSR	The building complies with the height, setback, landscaping and design controls applying to the site The proposal is consistent with the objectives of the control and the zone of the land	36%	Bayside Local Planing Panel	28/06/2022
DA-2021/357	22 & 23	4274		9 & 11	High Street	Turrella	2205	6: Residential - Other	Bayside LEP 2021	R4 - High Density Residential	12 metres & 18 metres	The non-compliance to the 12m height is a result of a transitionary height across the site to reflect transition between the R2 and R4 zone. The non-compliances represent an appropriate redistribution of building massing. Whereby floor space at the uppermost floor level has been reallocated from the part of the site affected by the 18m height limit in order to achieve a more geometric and functional floor plate configuration than the triangular form that might otherwise have resulted from a scheme that strictly followed the alignment of the height line between the 12m and 18m limits.	6.89 metres (57.4%)- to the 12 metre control and 1.94 metres (10.77%)- to the 18 metre control	Bayside Local Planing Panel	28/06/2022