

City Planning & Environment Committee

6.30pm Wednesday 8 March 2023

Venue: Committee Room, Botany Town Hall, Corner of Edward Street and Botany Road, Botany

Contact Us

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Bayside council acknowledges the Traditional custodians – the Gadigal/Bidjigal people of the Eora Nation.

The people of the Eora Nation, their spirit and ancestors will always remain with our water ways and the land – our Mother Earth.

**City Planning & Environment Committee Meeting
Councillor Seating**



Liz BARLOW



Chairperson
Jo Jansyn



Mayor / Deputy Chairperson
Christina CURRY



Jennifer MUSCAT



Greta WERNER



Heidi Lee DOUGLAS



Deputy Chairperson
Bill Saravinovski

General Manager
Meredith Wallace

Director
Peter Barber

Statement of Ethical Obligations

Obligations

Oath [Affirmation] of Office by Councillors

Oath

I swear that I will undertake the duties of the office of councillor in the best interests of the people of Bayside Local Government Area and the Bayside Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.

Affirmation

I solemnly and sincerely declare and affirm that I will undertake the duties of the office of councillor in the best interests of the people of Bayside Local Government Area and the Bayside Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.

Code of Conduct conflict of interests

Pecuniary interests

A Councillor who has a **pecuniary interest** in any matter with which the council is concerned, and who is present at a meeting of the council at which the matter is being considered, must disclose the nature of the interest to the meeting.

The Councillor must not be present at, or in sight of, the meeting:

- a) at any time during which the matter is being considered or discussed, or
- b) at any time during which the council is voting on any question in relation to the matter.

Non-pecuniary conflicts of interests

A Councillor who has a **non-pecuniary conflict of interest** in a matter, must disclose the relevant private interest in relation to the matter fully and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter.

Significant non-pecuniary interests

A Councillor who has a **significant** non-pecuniary conflict of interest in relation to a matter under consideration at a council meeting, must manage the conflict of interest as if they had a pecuniary interest in the matter.

Non-significant non-pecuniary interests

A Councillor who determines that they have a non-pecuniary conflict of interest in a matter that is **not significant** and does not require further action, when disclosing the interest must also explain why conflict of interest is not significant and does not require further action in the circumstances.

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 8 March 2023** at **6.30pm**

AGENDA

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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

City Planning & Environment Committee

8/03/2023

Item No	4.1
Subject	Minutes of the City Planning & Environment Committee Meeting - 8 February 2023
Report by	Richard Sheridan, Director City Performance
File	SF22/6414

Officer Recommendation

That the Minutes of the City Planning & Environment Committee meeting held on 8 February 2023 be noted.

Present

Councillor Jo Jansyn, Chairperson
Councillor Bill Saravinovski, Deputy Chairperson
Councillor Liz Barlow
Councillor Christina Curry (Mayor)
Councillor Jennifer Muscat
Councillor Greta Werner

Also present

Councillor Andrew Tsounis
Councillor Ann Fardell (via audio-visual link)
Meredith Wallace, General Manager
Fausto Sut, Manager Governance & Risk
Richard Sheridan, Director City Performance
Peter Barber, Director City Futures
Jourdan di Leo, Manager Property
Louise Farrell, Manager City Projects
Craig Dalli, Development Manager
Madeline Hourihan, Environment Officer
Eli Cowley, Coordinator Strategic Property
Josh Ford, Coordinator – Planning Policy
Tamara Lukic, Governance Officer
Suhradam Patel, IT Service Management Officer

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

1 Acknowledgement of Country

The Chairperson affirmed that 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 and Attendance via Audio-Visual Link

Apologies

Committee Recommendation (Councillor Saravinovski and Councillor Curry)

The following apology was received:

- Councillor Heidi Lee Douglas

Attendance Via Audio-Visual Link

There were no Committee members in attendance via audio-visual link.

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 - 9 November 2022

Committee Recommendation (Councillor Muscat and Councillor Barlow)

That the Minutes of the City Planning & Environment Committee meeting held on 9 November 2022 be noted.

4.2 Business Arising

The Committee notes that the Minutes of the City Planning & Environment Committee meeting of 9 November 2022 were received and the recommendations therein were adopted by the Council at its meeting of 23 November 2022 with the exception of Item CPE22.035

CPE22.035 Post-Exhibition Report: Bayside Draft Development Control Plan 2022

Minute 2022/367

Resolved on the motion of Councillors Morrissey and Saravinovski

1. That Council note the submissions (Refer Attachment 6 in report) received during the public exhibition of the draft Bayside Development Control Plan 2022.
2. That the Bayside Development Control Plan 2022 as exhibited (Attachment 1 in report) be amended to include the amendments in Attachment 8 in report, and the following amendment:

Table 3: Car Parking Rates in Part 3.5.5 for the types of residential development noted below be amended from:

Land use	Car Parking Rate
Residential	
Dwelling House / Dual Occupancy / Semi-detached	<ul style="list-style-type: none"> • 1 space per dwelling with 2 bedrooms or less • 2 spaces per dwelling with 3 bedrooms or more
Secondary Dwelling	Nil
Multi Dwelling Housing	<ul style="list-style-type: none"> • 1 space per dwelling with 2 bedrooms or less • 2 spaces per dwelling with 3 bedrooms or more • 1 visitor parking space per 5 dwellings.
Residential Flat Buildings/ Shop-top Housing	<ul style="list-style-type: none"> • 1 space per dwelling with 2 bedrooms or less • 2 spaces per dwelling with 3 bedrooms or more • 1 visitor parking space per 5 dwellings. <p>For sites located within 800m of a railway station, the car parking rates are as stipulated in the RTA Guide to Traffic Generating Developments (version 2.2 dated October 2002) section 5.4.3 - Metropolitan Sub-Regional Centres.</p>

to be as follows:

Land use	Car Parking Rate
Residential	
Dwelling House / Dual Occupancy / Semi-detached	• 2 spaces per dwelling
Secondary Dwelling	• 1 space per dwelling

Multi Dwelling Housing	<ul style="list-style-type: none"> • 1 space per dwelling with 1 bedroom or less • 2 spaces per dwelling with 2 bedrooms or more • 1 visitor parking space per 5 dwellings.
Residential Flat Buildings/ Shop-top Housing	<ul style="list-style-type: none"> • 1 space per dwelling with 1 bedroom or less • 2 spaces per dwelling with 2 bedrooms or more • 1 visitor parking space per 5 dwellings. <p>For sites located within 800m of a railway station, the car parking rates are as stipulated in the RTA Guide to Traffic Generating Developments (version 2.2 dated October 2002) section 5.4.3 - Metropolitan Sub-Regional Centres.</p>

In addition, the DCP be amended, subject to appropriate wording by Council staff, to have the effect of allowing carports to be permissible at the front of the building alignment subject to DA approval and provided also that the structure is sympathetic to the building and streetscape.

3. That Draft Bayside Development Control Plan 2022 be re-exhibited for a period of 6 weeks and be reported back to the February 2023 City Planning & Environment Committee and Council for consideration of any additional submissions, and that the updated draft revised DCP is distributed up to 20 stakeholders as nominated by the General Manager or her nominee.

5 Items by Exception

There were no Items by Exception

6 Public Forum

There were no speakers for Public Forum.

7 Reports

CPE23.001 Submission on Proposed Amendments to SEPP (Housing) 2021 - Explanation of Intended Effect

Committee Recommendation (Councillor Curry and Councillor Werner)

1. That Council endorse the submission made on 14 December 2022 to the Department of Planning and Environment in relation to the proposed amendments to SEPP (Housing) 2021.

2. That Council forward a copy of the submission to the Council's Local Members of Parliament.

CPE22.002 Summary of Responses From the Public Exhibition of the Draft Community and Verge Gardens Policy

Committee Recommendation (Councillor Curry and Councillor Barlow)

1. That Council adopt the Draft Community and Verge Gardens Policy subject to the changes outlined in points 2, 3 and 4.
2. That Council include in the policy a requirement to consult with the property owner adjoining the location of the verge garden as part of the application process.
3. That Council investigates different footpath width to accommodate or make allowances for footpaths under 1.5m width as outlined in the policy.
4. That advice be obtained on insurance coverage that may be available through Garden Clubs Australia or equivalent and information be provided as part of the application process.

CPE23.003 Clause 4.6 Variations to Development Standards - Quarterly Report

Committee Recommendation (Councillor Curry and Councillor Saravinovski)

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 two (2) of FY2023 be received and noted.

8 Confidential Reports / Matters

There were no confidential reports or confidential matters.

9 Conclusion of the Meeting

The Chairperson closed the meeting at 7.07 pm.

The next meeting will be held in the Committee Room, Botany Town Hall, at 6:30 pm on Wednesday, 9 March 2023.

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

8/03/2023

Item No	CPE23.004
Subject	Post-Exhibition Report: Draft Bayside Council Planning Agreement Policy
Report by	Peter Barber, Director City Future
File	SF23/959

Summary

In accordance with the Council's Resolution made on 23 November 2022, Bayside Council's Draft Planning Agreement Policy (**Attachment 1**) was placed on public exhibition from 20 December 2022 to 7 February 2023.

That period was extended in recognition of the time of year, and no submissions were received.

As there were no submissions received during the exhibition period, there are no changes proposed to the version of the Draft Policy that was endorsed by Council for exhibition.

Officer Recommendation

- 1 That Council adopts the Draft Bayside Council Planning Agreement Policy, as exhibited.
 - 2 That Council gives public notice of its decision to adopt the Draft Bayside Council Planning Agreement Policy on Council's website.
 - 3 That the General Manager be authorised to make further minor modifications, if required, to any administrative (numerical, typographical, interpretation and formatting) errors identified in the finalisation of the Draft Bayside Council Planning Agreement Policy.
 - 4 That the Draft Bayside Council Planning Agreement Policy immediately comes into effect once adopted by Council.
-

Background

Department of Planning and Environment Practice Note

In February 2021 the Department of Planning and Environment issued a Practice Note (refer **Attachment 2**) that encourages Councils to publish policies and procedures about their use of Planning Agreements. The draft Bayside Council Planning Agreement Policy responds to the guidance provided in the Practice Note.

The Practice Note advises that all parties to a Planning Agreement must adhere to fundamental principles:

- Planning authorities must always consider a development proposal on its merits, not on the basis of a Planning Agreement
- Planning Agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand
- Strategic planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population
- A consent authority cannot refuse to grant development consent on the grounds that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement
- Planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls
- Planning agreements must not include public benefits wholly unrelated to the particular development
- Value capture should not be the primary purpose of a Planning Agreement.

These principles have been incorporated in the Bayside Draft Planning Agreement Policy.

The Draft Bayside Council Planning Agreement Policy also reflects section 2.6 of the Practice Note, which states that Councils' Policies and Procedures should:

- Identify a methodology for determining the acceptability of a Planning Agreement (the Acceptability Test)
- Contain specific measures to protect the public interest and prevent misuse of planning agreements
- Have published rules and procedures
- Provide for public participation
- Extend fairness to all parties
- Guide regulatory independence of the planning authority.

Examples of the Use of Planning Agreements

Planning Agreements have the potential to be used in a wide variety of circumstances and to achieve many different outcomes. In some circumstances, a developer lodges a Planning Proposal that was not anticipated at the time Council's Local Strategic planning Statement was prepared. It is common that such proposals be accompanied by a public benefit offer that will ensure that adequate infrastructure is available to support development.

As previously noted, site-specific Planning Proposals must not be prioritised on the basis that they provide an opportunity for public benefits, and any public benefits to be delivered by a Planning Agreement should be related to the development. Some examples of the potential scope and application of Planning Agreements are:

- Compensation for inconvenience or impacts caused by development

- Meeting demand created by development
 - Prescribing inclusions in development
 - Providing benefits to the wider community as a host for development
 - Recurrent funding
 - Biodiversity offsetting.
-

Financial Implications

- | | | |
|--------------------------------------|-------------------------------------|---|
| Not applicable | <input checked="" type="checkbox"/> | Planning agreements have potential to ease pressure on infrastructure funding sources, as outlined above, however, they are voluntary and, as such, cannot be predicted or planned for. |
| Included in existing approved budget | <input type="checkbox"/> | |
| Additional funds required | <input type="checkbox"/> | |
-

Community Engagement

The Draft Bayside Council Planning Agreement Policy was placed on public exhibition from 20 December 2022 to 7 February 2023. The exhibition period was extended in recognition that it occurred over the end of year holiday season.

No submissions were received during this extended exhibition period.

Conclusion

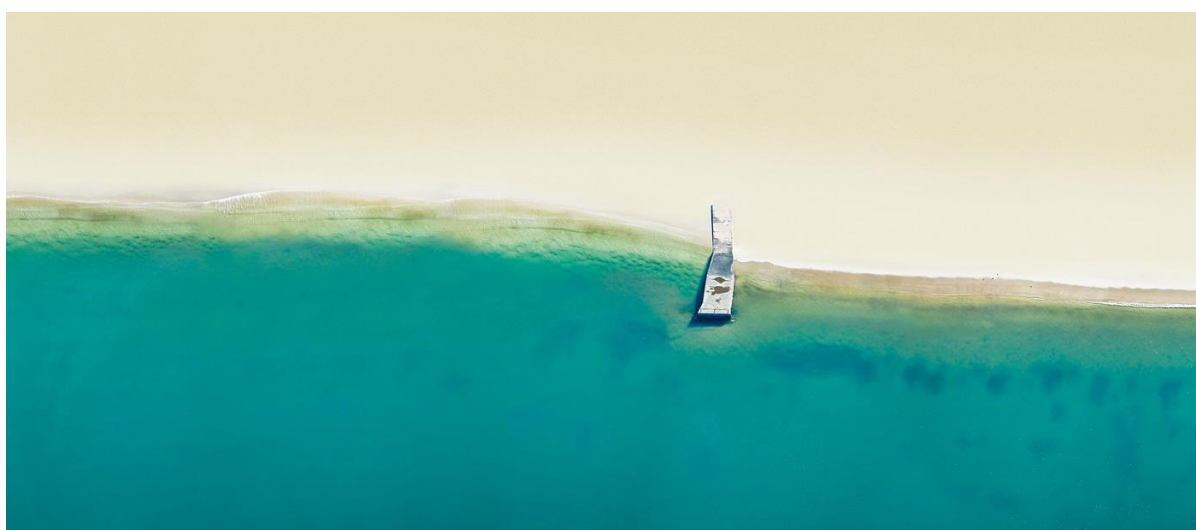
The draft Bayside planning Agreement policy has been written to reflect the guidance provided in the Department of Planning and Environment Practice Note. If adopted by Council, it will clearly set out the parameters within which Council will negotiate and consider planning agreement in the interest of fairness, probity and transparency. As no submissions were received in response to public exhibition, it is recommended that the draft Policy be adopted and take immediate effect.

Attachments

- 1 Exhibited Draft Bayside Council Planning Agreement Policy [↓](#)
- 2 DPE Practice Note - Planning Agreements [↓](#)



Draft Bayside Council Planning Agreement Policy



Revision:	3.0
Adoption date:	TBA
Last reviewed:	October 2022
Next review date:	TBA
Business unit:	Strategic Planning, City Futures
Responsible officer:	Contracts Manager
CM record number:	21/129019

Policy Amendments

Date:	Responsible Officer:	Revision & Description:
12/05/2021	Clare Harley	Draft for report to Council

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Draft Bayside Council Planning Agreement Policy 2022
 File: 21/129019 Document: Rev 2.0
 Policy Register: F16/951 Policy No.:
 Class of document: Council Policy / Administrative Policy

Enquiries:
 Manager, Strategic Planning.



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

1. Preliminary

1.1 About this policy

This document contains Bayside Council's (Council) Planning Agreement Policy. Planning agreements are legally established under the *Environmental Planning and Assessment Act 1979* (Act) and the *Environmental Planning and Assessment Regulation 2021* (Regulation).

1.2 Name of this policy

This policy is the Bayside Council Planning Agreement Policy

1.3 Objectives of this policy

The objectives of this policy are:

- (a) To establish Council's policy on the use of planning agreements,
- (b) To provide a clear and transparent framework for the Council's use of planning agreements,
- (c) To ensure that the negotiation, preparation, and implementation of planning agreements occurs in an open, fair, consistent, and accountable manner,
- (d) To establish a probity framework for the negotiation, preparation, and implementation of planning agreements,
- (e) To facilitate flexibility in the provision of required infrastructure for Bayside's growing and changing community.

1.4 Land to which this policy applies

This policy applies to all land within the Bayside Council Local Government Area (LGA) and to land outside of Council's LGA in the case of a joint planning agreement with another Council.

1.5 When will this policy be used?

This policy will be used in association with planning agreements to which the Council is a party, within their meaning under the Act and the Regulation.

1.6 What is a planning agreement?

Part 7, Subdivision 2, 7.4(1) of the Act defines a planning agreement as:

(1) a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer)—

- (a) who has sought a change to an environmental planning instrument, or*
- (b) who has made, or proposes to make, a development application or application for a complying development certificate, or*
- (c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies, under which the developer is required to dedicate*

land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

1.7 Why use planning agreements?

Planning agreements may be used to achieve public purpose outcomes that ordinarily would not be available through the planning and development system or are available, but in a constrained manner.

Planning agreements:

- a) provide a means for allowing the local host community to share in the benefit obtained by a developer due to a usually unanticipated change in planning controls or a consent to a development application;
- b) provide a way for the local community to secure public benefit outcomes that address the impact of development on private and public land;
- c) provide a flexible means for achieving good development outcomes in conjunction with public purpose outcomes, especially when development deviates from what may have been anticipated;
- d) allow opportunities for more innovative and efficient provision of public purpose outcomes than might be realised by other means; and
- e) provide opportunities for the local community to participate in the quality and delivery of public purpose outcomes provided along with development.

1.8 When Council may consider a planning agreement?

The Council may consider entering into a planning agreement when a developer:

- a) proposes to, or has made, a request for a planning proposal seeking a change to the Bayside Local Environmental Plan 2021; or
- b) proposes to, or has made, a development application, or an application under section 4.55 of the Act to modify a development consent, or made a Complying Development application; or
- c) proposes to undertake development on land included in the Bayside Local Environmental Plan 2021 - Land Reservation Acquisition Map; or
- d) proposes development for the purpose of signage to which Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021 applies.

Notwithstanding the above, the Council is not obliged to enter into a planning agreement with a developer.

1.9 Contributions authorised by a planning agreement

Planning agreement contributions may comprise:

- (a) monetary contributions; or
- (b) the dedication of land free of cost; or
- (c) any other material public benefit, or
- (d) any combination of the above.

Planning agreement contributions must be used or applied towards a public purpose. A planning agreement may replace or be in addition to infrastructure contributions otherwise payable in a particular circumstance under s.711 and/or s.7.12 of the Act. Any applicable Special Infrastructure Contribution (SIC) must be paid in addition to a planning agreement.

1.10 Principles for using a planning agreement

The Council's involvement in planning agreements is bound by the following principles:

- (a) Foremost, planning outcomes will not be bought or sold through planning agreements. Public purpose outcomes offered by developers do not make unacceptable development acceptable.
- (b) The Council will not allow planning agreements to fetter the exercise of its statutory planning functions.
- (c) When considering a written request from an applicant for a variation under clause 4.6 of the Bayside Local Environmental Plan 2021 seeking the variation of a development standard, the Council will not give weight to a planning agreement, be it executed, in draft or under offer. Public benefits provided under a planning agreement must not be exchanged for a variation from a development standard under any circumstances. Variations to development standards under Clause 4.6 must be justified on planning grounds, and the benefit under a planning agreement should preferably contribute to achieving the planning objective of the development standard.
- (d) The Council will only use planning agreements for a proper planning purpose.
- (e) Planning agreements should not include public purpose outcomes wholly unrelated to a particular development. Council, at its sole discretion, may apply a monetary contribution made under a planning agreement towards a public purpose other than the purpose specified if Council considers that the public interest would be better served.
- (f) The Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering planning agreements.
- (g) The Council will not improperly rely on its statutory position in order to extract unreasonable public purpose outcomes from a developer under a planning agreement.
- (h) Value capture should not be the primary purpose of a planning agreement.

2. Policy Context

2.1 Legislative framework

This policy and the preparation, content and implementation of planning agreements have regard to and are governed by:

- a) Part 7, Division 7.1, Subdivision 2 of the Act,
- b) Part 9, Division 1 of the Regulation,

With Consideration of:

- c) Any relevant practice note; current version issued by the NSW Department of Planning, Industry and Environment (DPIE) on 12 February 2021.

The practice note is legally binding in so far as:

Clause 203(7) of the Regulation operates to require Council to consider the practice note when negotiating or entering into planning agreements: *(7) A council that is negotiating or entering into a planning agreement must consider any relevant practice notes.*

All planning authorities are required under clause 205(2) of the Regulation, to consider the practice note when preparing the explanatory note. *(2) In preparing the explanatory note, the planning authority must consider any relevant practice notes issued by the Planning Secretary under section 203(6).*

If there are any inconsistencies between this policy and the practice note, the practice note prevails.

3. Preparing a planning agreement

3.1 Probity

The Council is committed to fairness, equity and ethical behaviour in the care, control and management of the Bayside LGA and in the administration of this policy. To this end, the following practices will apply:

- a) Roles and responsibilities within the processes for a planning agreement, a planning proposal and a development application will be managed to ensure transparency, impartiality and accountability and to avoid conflicts of interest. This will generally include separation of roles and responsibilities.
- b) Commercial and financial information will be treated as confidential material.

Depending on the type of planning agreement and the Council's involvement, the Council may engage a probity expert for advice and assistance with the agreement.

When Council owns land in association with a planning agreement, a probity plan may be created to ensure best practice.

Probity costs may be shared between Council and other parties associated with the planning agreement depending on a case by case basis.

3.2 Negotiating a planning agreement

3.2.1 Who will negotiate?

In any planning agreement the Council acts as a regulatory and planning authority and, in most cases, as a stakeholder and asset manager. This policy acknowledges those roles and seeks to separate them in order to ensure probity. Therefore, in negotiating a planning agreement the following arrangements regarding negotiation will be practiced:

- a) A Council staff member will be responsible for negotiating or co-ordinating the negotiation of a planning agreement with a developer or their representative. This will not be the staff member responsible for the assessment of the related planning proposal or development application.
- b) Councillors will not participate in negotiations with a developer or their representatives but will have a role in:
 - i. endorsing a draft planning agreement for exhibition,
 - ii. endorsing an offer to enter into a planning agreement,
 - iii. approving a planning agreement.
- c) Where negotiations occur in regard to land that is not owned by the developer, the written approval of the land owner authorising the developer to act on their behalf must be provided to the Council prior to commencement of negotiations. This requirement applies to land that is the subject of the development application or planning proposal and other land which may be part of negotiations.
- d) The developer is required to disclose all third party interests in the land or lands that are the subject of negotiations. The written consent of those parties must be provided prior to the commencement of negotiations.

3.2.2 When should negotiations commence?

The Council prefers that negotiations for a planning agreement commence before the lodgement of a development application or a request for a planning proposal is made. Negotiations may commence after a formal pre-development application or pre-planning proposal meeting has been undertaken.

3.2.3 Reporting and decision making

Throughout the planning agreement process, reports will be provided to the relevant committees of the Council and recommendations from those committees will be considered by the Council.

3.3 Who will prepare a planning agreement?

Unless otherwise determined between the parties:

- the developer will be responsible for drafting the offer to enter into a planning agreement.
- Council solicitors will draft the first-round version of a draft planning agreement and the explanatory note which must be exhibited with the planning agreement.
- The first-round draft planning agreement is then further revised through the Parties solicitors until an in-principle agreement in writing is achieved between the parties.

3.4 Acceptability Test

The Council will consider the following matters when determining the acceptability of a planning agreement by applying an Acceptability Test as outlined below.

A planning agreement must:

1. Provide development contributions that can be used for or applied towards a public purpose that would not form part of development consent obligations as part of the development in the absence of a planning agreement.
2. Be directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development.
3. Provide for the delivery of infrastructure or public benefits not wholly unrelated to the development.
4. Produce outcomes that meet the general values and expectations of the public and protect the overall public interest.
5. Provide for a reasonable means of achieving the desired outcomes and securing the benefits.
6. Protect the community against adverse planning decisions.
7. Satisfy the statutory requirements for planning agreements contained in the Act and the Regulation.
8. Satisfy the principles for using a planning agreement contained in this policy,
9. Not be in conflict with another planning agreement applying to the relevant land.

3.5 Acceptability of land to be dedicated The Council

In deciding whether land to be dedicated is acceptable, the Council will consider, where relevant, matters including:

- a) the monetary value of the land,
- b) the dimensions, location and topography of the land,
- c) the current use and improvements on the land,
- d) factors affecting the usability of the land, including soil condition, accessibility, solar access and relationship with existing public facilities,
- e) ongoing costs and renewal costs to Council, and
- f) works proposed to be undertaken by the applicant.

3.6 Acceptability of a material public benefit

In deciding whether a material public benefit is acceptable, the Council will consider, where relevant, matters including:

- a) the monetary value of the benefit,

- b) what needs of the community could be satisfied,
- c) the financial implications for the Council,
- d) the timing of completion of works or the delivery of the benefit, and
- e) future recurrent costs associated with the benefit.

3.7 Valuation of development contribution or offer

The monetary value of a development contribution or an offer by a developer comprising land to be dedicated or a material public benefit is to be determined prior to a draft planning agreement being agreed in-principle.

In most cases, a land valuation is to be determined by a qualified land valuer and a qualified quantity surveyor in the case of a material public benefit.

3.8 Costs

The costs for preparing, executing, stamping and registering the planning agreement are to be met by the developer.

The Council's costs in negotiating, assessing, reviewing, administering and enforcing the planning agreement will be met in part or full by the developer depending on the circumstances. The Council's costs may be related to matters and actions including the use of independent consultants, legal advice, notification and advertising, and Council staff preparation and administration time.

The planning agreement will include provision for the payment of costs by the developer and the Council. The developer may be required to pay a security deposit for meeting the Council's costs.

4. Form and content of a planning agreement

4.1 Statutory requirements

The Act and Regulation set out the statutory requirements governing the form and content of a planning agreement and the mandatory process in its preparation, including steps for public notification and the requirement for explanatory notes. Details contained in the Act and Regulation are supplemented by the Practice Note. This policy adopts the requirements and processes contained in the Act, the Regulation and the Practice Note.

4.2 Timing the delivery of development contributions

A planning agreement will specify the time at which a development contribution must be paid or provided.

Where the planning agreement is associated with a development application, a monetary contribution should be provided prior to an occupation certificate being issued.

In other cases, the timing for the payment of a monetary contribution will be negotiated. A planning agreement may contain a provision allowing the deferral, periodic payment or staging of a development contribution. In such cases, a provision allowing the adjustment of the contribution value may be included in the agreement.

4.3 Indexation - adjustment of development contributions

A planning agreement that includes a monetary development contribution payment to Council is to be indexed on the date of payment using the following indexes released by the Australian Bureau of Statistics and will be selected, at the sole discretion of Council, depending on the nature and type of development contribution to be indexed:

- 1) All groups CPI; Sydney
Series ID: A2325806K, 640101
- 2) Producer Price Index; 3101 Road and bridge construction NSW
Series ID A2333685A, 6427017

Late monetary contributions payments will attract a penalty interest rate payable in accordance with Rule 36.7 of the of the Uniform Civil Procedure Rules 2005.

4.4 Pooling of development contributions

Any residual monetary amounts remaining in planning agreement reserves, may be pooled and used by Council towards a public purpose outcome at the sole discretion of Council.

Monetary developer contributions arising from planning agreements can be pooled, at the sole discretion of Council with funds obtained from other planning agreements, contribution plans, grants and any other funding sources to be used for public purposes identified in those agreements and plans or as per this policy.

4.5 Security/enforcement of a planning agreement

A planning agreement will include a provision relating to the enforcement of obligations set out in the agreement. An appropriate type of security will be negotiated as part of the planning agreement and will be aligned with the type of contribution such as a monetary contribution, land dedication or a work in kind.

The type of security will also be aligned with different circumstances that might apply with the delivery of the particular contribution and the existing and future tenure of land. Types of acceptable security to Council include bonds and bank guarantees and a pre-acquisition agreement in the case of land dedication.

Insurance Bonds or Investment Bonds will not be accepted by Council.

4.6 Dispute resolution

A planning agreement will include a provision for the mediation of disputes. Should it be necessary to enter into dispute resolution, each party will bear their own costs. If the dispute has arisen due to a failure of the developer in meeting an obligation, Council will pursue costs.

4.7 Assignment and dealings by the developer

A planning agreement will include a provision requiring the Council's prior consent to:

- a) the sale or transfer of the land which is the subject of the agreement,
- b) the assignment of the developer's rights and obligations under the agreement to a third party, or

- c) any novation of the agreement.

4.8 Registration of a planning agreement

A planning agreement will include a provision requiring the registration of the agreement on the title of the land to which the agreement applies at the developer's cost.

4.9 Reporting

Council will report on planning agreements in its Annual Report and maintain a register as required by the Act and Regulations.

5. Administrative

5.1 Definitions

In this policy the following definitions apply.

Annual report means the report prepared by the Council under section 428 of the Local Government Act 1993.

Contribution plan means a contribution plan approved under section 7.18 of the Act.

Council means Bayside Council.

Developer means an entity or entities carrying out Development as referred to in section 1.5 of the Act.

Development has the same meaning referred to in section 1.5 of the Act.

Development application has the same meaning referred to in section 1.4 of the Act.

Development Consent has the same meaning referred to in section 1.4 of the Act.

Explanatory note has the same meaning referred to in section 205 of the Regulations.

Local infrastructure contributions has the same meaning referred to in section 7.11 (cf previous s 94) and section 7.12 (cf previous s 94A) of the Act.

Minister means the Minister for Planning.

Planning agreement has the same meaning referred to in section 7.4 of the Act.

Planning agreement contribution means a contribution made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit, or a combination thereof, to be used for, or applied towards a public purpose.

Planning authority has the same meaning referred to in section 7.1 of the Act.

Practice note means the document titled "Planning agreements" issued by the NSW Department of Planning, Industry and Environment (DPIE) on 12 February 2021.

Planning proposal means a document and supporting information that explains the intended effect and justification of a proposed Local Environmental Plan (LEP) or amendment to a Local Environmental Plan (LEP).

Public purpose as defined under section 7.4(2) of the Act, includes (without limitation) any of the following:

- (a) *the provision of (or the recoupment of the cost of providing) public amenities or public services,*
- (b) *the provision of (or the recoupment of the cost of providing) affordable housing,*
- (c) *the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,*
- (d) *the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,*
- (e) *the monitoring of the planning impacts of development,*
- (f) *the conservation or enhancement of the natural environment.*

the Act means the Environmental Planning and Assessment Act 1979.

the Regulation means the Environmental Planning and Assessment Regulation 2021.

Value capture means a Planning authority capturing a proportion of the land value increase accruing from planning activities that increase the development potential of the land.

5.2 Approval and commencement

This policy was approved by Council on xx/xx/xxxx and commenced on xx/xx/xxxx.

5.3 Monitoring, reviewing and reporting

The operation of this policy will be monitored, reviewed and reported to the Council periodically.



Planning agreements

Practice note – February 2021



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Preface

Planning agreements

A planning agreement is a voluntary agreement or other arrangement between a planning authority and a developer, who has:

- sought a change to an environmental planning instrument; or
- made or proposes to make a development application or application for a complying development certificate,

under which the developer is required to:

- dedicate land free of cost;
- pay a monetary contribution;
- provide any other material benefit; or
- provide any combination of the above,

to be used for or applied towards a public purpose.

This practice note provides guidance on matters relating to planning agreements, often referred to as voluntary planning agreements or VPAs. It sets out the statutory framework for planning agreements and other matters such as the fundamental principles governing their use.

Legislative and regulatory framework

Part 7 Division 7.1 Subdivision 2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides the legislative framework for planning agreements.

Part 4 Division 1A of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) has further requirements relating to the form and subject matter of planning agreements, making, amending and revocation of planning agreements, giving public notice and other procedural arrangements relating to planning agreements.

About this practice note

This practice note is made for the purposes of clause 25B of the EP&A Regulation to assist parties in the preparation of planning agreements.

Planning authorities are not required to apply this practice note, when finalising proposed planning agreements which have been publicly notified pursuant to section 7.5 (1) of the EP&A Act, but not finalised before the issue of this practice note. However, planning authorities may choose to consider parts of the practice note when finalising these planning agreements.

This practice note replaces the previous 'Practice Note – Planning Agreements' issued by the Director General of the then Department of Infrastructure, Planning, and Natural Resources in July 2005.

How to use this practice note

The practice note is structured as follows:

Part 1 provides the rationale for planning agreements.

Part 2 identifies and provides fundamental principles and policy considerations.

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Part 3 sets out strategic considerations for when and how planning agreements can be used.

Part 4 provides guidance on the procedures and decision-making for application, negotiation and administration of planning agreements.

Part 5 provides examples of the use of planning agreements.

Affordable Housing Contributions

State Environmental Planning Policy No. 70 - Affordable Housing (Revised Schemes) (SEPP 70) is the enabling mechanism for securing affordable housing contributions through imposing a condition of consent. To secure contributions through this pathway, councils must establish an affordable housing contribution scheme and arrange for the relevant local environmental plan to be amended to authorise the imposition of the condition. *Environmental Planning Assessment (Planning Agreements) Direction 2019* sets out the matters to be considered by council if negotiating a planning agreement which provides for affordable housing.

Mining Projects

This practice note does not apply to planning agreements for mining projects. However, councils can refer to Parts 1, 4 and 5, for appropriate guidance on use, process and governance of those planning agreements.

Terminology

The following terminology is used to convey key concepts in relation to planning agreements:

- **development application** has the same meaning as in the EP&A Act
- **development consent** has the same meaning as in the EP&A Act
- **development contribution** means a contribution made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit, to be used for or applied towards a public purpose
- **planning authority** has the same meaning as in Division 7.1 of Part 7 of the EP&A Act
- **planning obligation** means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution
- **planning proposal** has the same meaning as in the EP&A Act
- **public benefit** is the benefit enjoyed by the public as a consequence of a development contribution
- **public facilities** means public infrastructure, amenities and services

Updates to this practice note

This practice note will be periodically updated. More detailed information or guidance on specific matters in this practice note may also be the subject of future separate practice notes.

Transitional arrangements

This practice note does not apply to a new or amended planning agreement if it:

- has been substantially negotiated when this practice note is published, and
- public notice of the agreement or amendment is given before 1 July 2021.

Part 1 Introduction

1.1 Purpose of planning agreements

Planning agreements are used widely in the planning system as a tool for delivering innovative or complex infrastructure and public benefit outcomes in connection with planning proposals and development applications.

They provide a way for planning authorities and developers to negotiate flexible outcomes in respect of development contributions and enable the NSW planning system to deliver sustainable development while achieving key economic, social and environmental objectives.

Planning agreements enable the provision of development contributions for a variety of public purposes, some of which extend beyond the scope of section 7.11 and 7.12 (local infrastructure contributions), of the EP&A Act. For example, these additional purposes could include the recurrent funding of public facilities provided by councils, the capital and recurrent funding of transport, the protection and enhancement of the natural environment, and the monitoring of the planning impacts of development.

Planning agreements are negotiated between planning authorities and developers in the context of applications for changes to environmental planning instruments (planning proposals) or for consent to carry out development (development applications).

1.2 Rationale for planning agreements

Since the commencement of the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*, the use of planning agreements has steadily grown across NSW. There is a range of reasons why the use of planning agreements has become widespread.

- Planning agreements provide a flexible means of achieving tailored development outcomes and focused public benefits, including agreement by communities to the redistribution of the costs and benefits of development.
- Planning agreements can provide enhanced and more flexible infrastructure funding opportunities and better planning implementation.
- Planning agreements allow for the flexible delivery of infrastructure for a development proposal which may have good planning merit but be out of sequence with broader strategic planning processes.

Planning agreements provide a flexible framework under which the planning authorities can share responsibility for the provision of infrastructure in new release areas or in major urban renewal projects. They permit tailored governance arrangements and the provision of infrastructure in an efficient, co-operative and coordinated way.

Part 2 Principles and policy for planning agreements

2.1 Fundamental principles

Planning agreements must be governed by a set of policy principles that ensure transparency, fairness and flexibility of planning decisions. A planning agreement cannot and should not purport to fetter any authority's exercise of statutory functions, in particular the function of a relevant planning proposal authority in relation to a planning proposal, a local plan-making authority in relation to the local environmental plan that gives effect to a planning proposal or the consent authority for a development application.

A planning agreement related to a development application is one of several matters for consideration identified by the EP&A Act when a consent authority is determining a development application. Public benefits offered by developers do not make unacceptable development acceptable.

Planning authorities and developers that are parties to planning agreements should adhere to the following fundamental principles.

- Planning authorities should always consider a development proposal on its merits, not on the basis of a planning agreement.
- Planning agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand.
- Strategic planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population.
- A consent authority cannot refuse to grant development consent on the grounds that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.
- Planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls.
- Planning agreements must not include public benefits wholly unrelated to the particular development.
- Value capture should not be the primary purpose of a planning agreement.

2.2 Public interest and probity considerations

It is critical to consider whether a planning agreement is in the public interest. Generally speaking, the public interest is directed towards ensuring planning controls are imposed fairly for the benefit of the community. In some cases, the public interest may be directed towards the need to mitigate adverse impacts of development on the public domain or towards providing a benefit to the wider community.

Planning agreements are matters of public interest and this is a relevant consideration in negotiating outcomes. The negotiation of planning agreements involves the use of discretion on both sides, allowing planning authorities and developers to consider different values and varying concepts of the public and private interests.

The ability for a planning agreement to wholly or partly exclude the application of other infrastructure contributions gives a planning authority scope to prioritise the items of infrastructure

that is most needed under an agreement. This means that the financial, social and environmental costs and benefits of development can be redistributed through a planning agreement.

However, there is no guarantee that these costs and benefits will be equitably distributed within the community and what may be a specific benefit to one group in the community may be a loss to another group or the remainder of the community. As such, best practice principles, policies and procedures should be implemented as safeguards to protect the public interest and the integrity of the planning process. These are discussed in *Section 2.6 Policies and procedures for planning agreements*.

If probity and public interest are not considered, planning agreements may produce undesirable outcomes, including where:

- A planning authority seeks inappropriate benefits through a planning agreement because of opportunism or to overcome revenue-raising or spending limitations that exist elsewhere.
- A planning authority has not undertaken appropriate infrastructure planning as part of strategic land use planning, resulting in growth being poorly aligned with infrastructure planning and funding, infrastructure demand and costs relating to infrastructure operation.
- There is insufficient analysis of the likely planning impacts of a proposed development because a planning authority is determined to enter into, or to give effect, to a planning agreement.
- A planning authority allows the interests of individuals or small groups to demand benefits, which otherwise outweigh the public interest.
- A planning authority takes advantage of an imbalance of bargaining power between the planning authority and developer, for example by improperly relying on its statutory position in order to extract unreasonable public benefits under a planning agreement.
- A planning authority's ability to make independent decisions is compromised, or its decisions appear to be fettered by a planning agreement.

The potential for misuse also exists where a planning authority, acting as consent authority or in another regulatory capacity for development, is both party to a planning agreement and a development joint venture partner under the agreement, for example as a landowner. Special safeguards, such as the use of an independent third party in the development assessment process, would be appropriate in such circumstances.

Considerations for public participation

Public participation in the planning agreement process is important to ensure the community has an opportunity to provide input in decisions being made relating to public benefit and development. Planning agreements redistribute the costs and benefits of a development, and it is critical the public can comment on whether they think the balance between development and public benefit is achieved successfully. Public participation processes are discussed in *Section 4.5 Public participation and notification*.

2.3 Value capture

The term value capture is widely used and covers several different practices. This practice note does not attempt to define or discuss them all. In general, the use of planning agreements for the primary purpose of value capture is not supported as it leads to the perception that planning decisions can be bought and sold and that planning authorities may leverage their bargaining position based on their statutory powers.

Planning agreements should not be used explicitly for value capture in connection with the making of

planning decisions. For example, they should not be used to capture land value uplift resulting from rezoning or variations to planning controls. Such agreements often express value capture as a monetary contribution per square metre of increased floor area or as a percentage of the increased value of the land. Usually the planning agreement would only commence operation as a result of the rezoning proposal or increased development potential being applied.

2.4 Relationship with development applications and planning proposals

Development applications

When determining a development application, the consent authority is required by the EP&A Act to take into consideration any relevant planning agreement or draft agreement that the developer has offered to enter into. The consent authority is also required to take into consideration any public submissions made in respect of the development application, which may include submissions relating to a planning agreement.

Planning proposals

The EP&A Act requires a planning proposal authority to state the objectives and outcomes of a planning proposal, and to describe and justify the process by which they will be achieved. The role of a planning agreement in facilitating these objectives or outcomes should be clearly set out in the planning proposal documentation.

Nexus

Development contributions provided for in a planning agreement are not required to bear the same nexus with development as required for section 7.11 local contributions. However, planning agreements should provide for public benefits that are not wholly unrelated to development.

Varying development standards

Benefits provided under a planning agreement must not be exchanged for a variation from a development standard under any circumstances. Variations to development standards under Clause 4.6 of the Standard Instrument LEP must be justified on planning grounds, and the benefit under the agreement should contribute to achieving the planning objective of the development standard.

Conditions of development consent

Planning authorities and developers must make a judgement in each case about whether negotiation of a planning agreement is beneficial and otherwise appropriate. However, planning agreements should not be used to require compliance with or restate obligations imposed by conditions of development consent.

2.5 Acceptability test

Planning agreements should be assessed against the acceptability test below which is a generally applicable test for determining the acceptability of a planning agreement.

The acceptability test requires that planning agreements:

- Are directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development.
- Provide for the delivery of infrastructure or public benefits not wholly unrelated to the development.

- Produce outcomes that meet the general values and expectations of the public and protect the overall public interest.
- Provide for a reasonable means of achieving the desired outcomes and securing the benefits.
- Protect the community against adverse planning decisions.

2.6 Policies and procedures for planning agreements

Councils are strongly encouraged to publish policies and procedures concerning their use of planning agreements. Best practice principles, policies and procedures should be implemented as safeguards to protect the public interest and the integrity of the planning process.

These safeguards are to protect against the misuse of planning discretions and processes, which may seriously undermine good planning outcomes and public confidence in the planning system. They should ensure that planning decisions are made openly, honestly and freely in any given case and fairly and consistently across the board.

Policies applying to the use of planning agreements should:

- Provide a generally applicable test for determining the acceptability of a planning agreement (see *Section 2.5 Acceptability Test*).
- Contain specific measures to protect the public interest and prevent misuse of planning agreements.
- Have published and accessible rules and procedures.
- Provide for effective formalised public participation.
- Extend fairness to all parties affected by a planning agreement.
- Guarantee regulatory independence of the planning authority.

Policies and procedures prepared by planning authorities should incorporate the contents of this practice note and the following considerations:

- How the use of planning agreements aligns with any relevant district and regional strategic plans and policies.
- How the use of planning agreements fits within the context of the planning authority's broader organisational strategic planning and land use planning policies, goals, and strategies.
- The circumstances in which the planning authority would consider entering into a planning agreement.
- The land use planning and development objectives that are sought to be promoted or addressed by the use of planning agreements.
- The role served by planning agreements in the development contributions and infrastructure funding systems of the planning authority.
- The types of development to which planning agreements will ordinarily apply, and how their use may be differentiated between different types of development.
- Whether any thresholds apply to the use of planning agreements in relation to particular types of development or in particular circumstances.
- The matters ordinarily covered by a planning agreement.
- The form of development contributions ordinarily sought under a planning agreement.
- The kinds of public benefits sought.
- The method for determining the value of public benefits.
- When, how and where public benefits will be provided.

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- The procedures for negotiating and entering into planning agreements.
- The planning authority's policies on other matters relating to planning agreements, such as review and modification, discharging of the developer's obligations under agreements, dispute resolution and enforcement mechanisms, and payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of agreements.

Part 3 Strategic considerations when using planning agreements

3.1 When to use planning agreements

This section provides guidance and strategic considerations on when to use planning agreements. Planning agreements should meet the considerations set out in Section 2.1 Fundamental principles and Section 2.5 Acceptability test and should fully comply with the specific requirements in these sections. Whether a planning agreement is acceptable and reasonable can only be judged in the circumstances of the case and considering State, regional or local planning policies.

Planning agreements have the potential to be used in a wide variety of circumstances. For example, they may be an appropriate contribution mechanism:

- In major development sites or precincts that are owned by a single landowner or a consortium of landowners.
- Where the developer has a direct incentive, such as bringing forward potential development, to be involved in the delivery of community infrastructure.
- Where the developer wants to provide community infrastructure in addition to, or at a higher standard than, what has been specified under the contributions plan.
- Where a council and the developer negotiate a different and better or more innovative outcome than can be achieved through imposing direct or indirect contributions.
- Where a proposed development has not been anticipated by local council and thus works and facilities to cater for this development have not been identified. A planning agreement can be prepared to specifically target the needs of the development.

Objectives of planning agreements

The objectives of planning agreements will be dictated by the circumstances of each case and the policies of planning authorities in relation to their use. However, as a general indication, planning agreements may be directed towards achieving the following broad objectives:

- Meeting the demands created by the development for new or augmented public infrastructure, amenities and services.
- Securing off-site benefits for the community so that development delivers a net community benefit.
- Compensating for the loss of or damage to a public amenity, service, resource or asset by development through replacement, substitution, repair or regeneration.

Relationship to other contributions mechanisms

Planning agreements should complement other contribution mechanisms. They can be used to deliver infrastructure outcomes for which these contributions are required, or additional public benefit. Planning agreements should not be used as de facto substitutes for contributions plans.

There is a clear legislative, regulatory and policy framework supporting contributions plans which does not apply to planning agreements. Where there is need for public infrastructure across a development area with a range of landowners, a contributions plan is likely to be more appropriate because it simplifies transactions and is underpinned by clear strategic planning.

Planning agreements may be used to overcome past deficiencies in infrastructure provision that would otherwise prevent development from occurring. This may involve the conferring of a public benefit under the agreement.

3.2 Land use and strategic infrastructure planning

This section provides advice on how planning agreements can support broader strategic infrastructure planning, particularly in areas where there is significant growth, and where a planning agreement may be associated with a planning proposal.

Land use planning should occur concurrently with strategic infrastructure planning to ensure that built form provisions and infrastructure contributions deliver both appropriate urban forms and contributions related to the development.

Strategic infrastructure planning should be undertaken regularly and address expected growth, infrastructure demand resulting from this growth, and the apportioned cost of these infrastructure provisions. Planning agreements should be used towards public benefits that are in accordance with the council's infrastructure planning and funding policies and strategies. Planning agreements should not be used as a substitute to proper strategic infrastructure planning.

Local Strategic Planning Statements

Local strategic planning statements set out the 20-year vision for land use in the local area, including how change will be managed into the future. These statements need to align with the regional and district plans, and council's own priorities in the community strategic plan it prepares under the *Local Government Act 1993*. The statements identify the planning priorities for an area and explain how these are to be delivered.

In this regard, local strategic planning statements will identify upfront the strategic planning priorities and infrastructure needs for an area, which should be reflected in planning agreements that demonstrate a comprehensive approach to infrastructure planning and funding.

Impact of planning proposals

There may be circumstances where a developer lodges a planning proposal that was not anticipated at the time the local strategic planning statement was prepared. It is common site-specific planning proposals in locations where development had not been anticipated to be accompanied by offers to enter into planning agreements. While it is appropriate that applications for more intensive development also consider opportunities for public benefit associated with development, this must be in a way that is mutually agreeable between the planning authority and the developer.

Planning authorities must ensure that adequate infrastructure is available to support the development, that the community can be confident in the integrity of the planning decision and that the planning authority is not improperly relying on its statutory role to extract unreasonable contributions.

Site specific planning proposals must not be prioritised on the basis they provide an opportunity for public benefits. Public benefits to be delivered by development should not be wholly unrelated to the development and the costs should be clearly set out and justified in the planning agreement. It is important that planning agreements in relation to planning proposals complement a comprehensive approach to infrastructure planning and funding.

Part 4 Procedures and decision making

4.1 Basic procedures for entering into a planning agreement

Planning agreements may be negotiated between planning authorities and developers in relation to development applications or changes sought by developers to local environmental plans. Where possible, planning agreements should be negotiated between planning authorities and developers before the related development application is determined or the local environmental plan giving effect to the planning proposal is made so that the development application or planning proposal may be exhibited or notified alongside the draft planning agreement. The steps below are provided for general guidance and are indicative only. The actual steps taken in negotiating each specific planning agreement may differ.

Indicative steps for planning agreements

Step 1 Commencement Before making a development application or submitting a planning proposal, the planning authority and developer decide whether to negotiate a planning agreement. In making this decision consideration should be given to this practice note, relevant legislation and any relevant policies. The parties consider whether other planning authorities and other persons associated with the development should be additional parties to the planning agreement, such as the landowner if the landowner is a different person to the developer.

Step 2 Negotiation If an agreement or arrangement is negotiated, it is documented as a draft planning agreement with an accompanying explanatory note. The draft planning agreement should be assessed against the acceptability test outlined in this practice note. The parties should consider how the draft planning agreement will be enforced and when the draft planning agreement will be executed, as this will inform the security provisions and conditions of the agreement. Legal advice should be sought in each case to ensure that the appropriate provisions are included in the planning agreement.

Step 3 Application When the developer makes the application or submits a planning proposal to the relevant authority, it should be accompanied by the draft planning agreement that has been signed by the developer and the explanatory note.

Step 4 Notification Relevant public authorities are consulted and the application or planning proposal, draft planning agreement and explanatory note are publicly notified in accordance with the EP&A Act and EP&A Regulation. Any amendments required to the application or planning proposal and draft agreement as a result of submissions received are made. If necessary, the amended application, draft planning agreement and explanatory note are re-notified.

Step 5 Assessment The draft planning agreement and public submissions are considered in the determination of the related application. The weight given to the draft planning agreement and public submissions is a matter for the relevant authority acting reasonably.

Step 6 Execution The draft planning agreement is either executed before the relevant application is determined or not long after the application is determined.

4.2 Offer and negotiation

Offer to enter into a planning agreement

The EP&A Act does not define what constitutes an 'offer' for the purpose of section 7.7(3) of the EP&A Act. However, an offer should:

- Be in writing.
- Be addressed to the planning authority to whom it is made.
- Be signed by or on behalf of all parties to the proposed planning agreement other than the planning authority to whom the offer is made.
- Outline in sufficient detail the matters required to be included in a planning agreement as specified in s7.4 (3) of the EP&A Act to allow proper consideration of the offer by the planning authority.
- Address in sufficient detail any relevant matters required to be included in an offer as specified in any applicable planning agreements policy published by the planning authority to whom the offer is made to allow proper consideration by the planning authority.
- Outline in sufficient detail all other key terms and conditions proposed to be contained in the planning agreement to allow proper consideration by the planning authority.

A consent authority cannot refuse to grant development consent on the grounds that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.

However, if a developer has offered to enter into a planning agreement in connection with the development application or a change to an environmental planning instrument, then a consent authority is authorised to require a planning agreement to be entered into in the terms of the offer as a condition of development consent.

Efficient negotiation systems

Planning authorities, particularly councils, should implement fast, predictable, transparent and accountable negotiation systems for planning agreements. Negotiation of planning agreements should not unnecessarily delay ordinary planning processes and should run in parallel with applications to change environmental planning instruments or development applications. This includes through pre-application negotiation in appropriate cases. Negotiation should be based on principles of co-operation, full disclosure, early warning, and agreed working practices and timetables.

Involvement of independent third parties

Independent third parties can be used in a variety of situations involving planning agreements. Planning authorities and developers are encouraged to make appropriate use of them during negotiation, including where:

- An independent assessment of a proposed change to an environmental planning instrument or development application is necessary or desirable.
- Factual information requires validation.
- Sensitive financial or other confidential information must be verified or established in the course of negotiations.
- Facilitation of complex negotiations is required for large projects or where numerous parties or stakeholders are involved.
- Dispute resolution is required.

Dispute resolution

Different kinds of dispute resolution mechanisms may suit different disputes, and this should be reflected in a planning agreement. For example, mediation may be suitable to deal with disputes arising from grievances, while expert determination may be suitable to resolve disputes of a technical nature and arbitration may be suitable for resolving commercial disputes.

4.3 Costs and charges

Costs

There is no comprehensive policy on the extent to which a planning authority may recover costs for negotiating, preparing, executing, registering, monitoring, enforcing and otherwise administering planning agreements. Wherever possible, planning authorities and developers should negotiate and agree costs at the earliest opportunity.

GST considerations

Both parties to a planning agreement have a potential GST liability and they should obtain advice in every case on whether a potential GST liability attaches to the agreement.

Recurrent costs and maintenance payments

Planning agreements may require developers to make contributions towards the recurrent costs of facilities that primarily serve the development to which the planning agreement applies or neighbouring development in perpetuity. However, where the facilities are intended to serve the wider community, planning agreements should only require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility.

4.4 Registration and administration

Standard form planning agreements

Planning authorities are encouraged to publish and use standard form planning agreements or standard clauses for inclusion in planning agreements in the interests of process efficiency.

Documentation of planning agreements

The parties to a planning agreement should agree on which party is to draft the agreement to avoid duplication of resources and costs.

Councils are required to keep and make available a register of planning agreements. The register should be made available online or incorporated into the online planning register of the planning authority's website.

Monitoring and review of planning agreements

Planning authorities should use standardised systems to monitor the implementation of planning agreements in a systematic and transparent way. This may involve co-operation by different parts of planning authorities.

Monitoring systems should enable information about the implementation of planning agreements to be made readily available to public agencies, developers and the community. Planning agreements should contain a mechanism for their periodic review that should involve the participation of all parties.

Security for enforcement of developer's obligations

Parties should consider the means by which a planning agreement may be enforced. The most suitable means of enforcement may depend on:

- The circumstances of the planning agreement.
- The nature and extent of the developer's obligations under the planning agreement.
- The planning authority's reasonable assessment of the risk and consequences of non-performance.

Tying the performance of the developer's obligations to the issuing of construction, subdivision or occupation certificates may provide a suitable means of enforcing planning agreement obligations in some cases. The EP&A Act and the EP&A Regulation restrict the issuing of a construction certificate, subdivision certificate or occupation certificate by a certifier until any preconditions to the issuing of the certificate specified in a planning agreement have been complied with. Where adopting this approach, consideration should be given to including provisions to allow a developer to provide a financial security, such as a bond or bank guarantee, if they subsequently seek release of a certificate before completing the required obligations. This will avoid the need to amend the planning agreement.

Financial security, such as a bond or bank guarantee, can be a suitable means of enforcement where a planning agreement requires the carrying out of works or the dedication of land by the developer. Financial security can be called on by the planning authority in the event of default, coupled with step-in rights by the planning authority. The value of the financial security should relate to the potential costs that may be incurred by the planning authority in carrying out the relevant works obligations of the developer in the event of default by the developer.

Financial security or additional financial security may also be appropriate where the developer seeks to postpone obligations under a planning agreement to a time later than the time originally specified for performance. An amendment to the planning agreement would ordinarily be required in such circumstances unless the planning agreement already makes provision for such an arrangement.

Registration on title

Registration is important to inform people of the existence of a planning agreement affecting the land and for the enforcement of a planning agreement. Registration on title may bind future owners of the land to the agreement.

To ensure that the intention of the parties to register the planning agreement is not defeated, the developer should get written agreement to the registration from each person with an estate or interest in the land to which the planning agreement applies. This should be provided to the planning authority as a precondition to the execution of the planning agreement.

Provision should be made in a registered planning agreement about when the notation of the planning agreement on the title to land can be removed. For example, when:

- The developer has complied with the obligations under the planning agreement in respect of a part of the land and the notation of the planning agreement will be removed from that part of the land.
- Land the subject of the planning agreement is subdivided and titles for new lots are created and the developer has complied with all relevant planning agreement obligations relating to the subdivision.
- Additional valuable security for performance of the planning agreement acceptable to the planning authority is provided by the developer in exchange for removal of the registration of the planning agreement from the title to land.

Discharge of developer's obligations

Planning agreements should not impose obligations on developers indefinitely. Planning agreements should set out the circumstances in which the parties agree to discharge the developer's obligations under the agreement.

4.5 Public participation and notification

Planning agreements must be publicly notified and made available for public inspection before they can be entered into.

The EP&A Regulation requires that the notification of a proposed planning agreement occurs at the same time as the planning proposal or development application, or if this is not practicable, as soon as possible after.

The terms of the planning agreement and its proposed public benefits should be clearly shown as part of consultation material. This will help the community make a fully informed decision on the overall proposal.

Planning agreements must be accompanied by an explanatory note to assist the public in understanding the agreement. Other types of consultation material are encouraged in addition to the explanatory note. This might include additional written material, diagrams or plans.

Amendment to proposed planning agreement after public notification

Any material changes that are proposed to be made to a planning agreement after a public notice has been given should be subject to renotification if the changes would materially affect:

- How any of the matters specified in section 7.4 of the EP&A Act are dealt with by the planning agreement.
- Other key terms and conditions of the planning agreement.
- The planning authority's interests or the public interest under the planning agreement.
- Whether a non-involved member of the community would have made a submission objecting to the change if it had been publicly notified.

4.6 Explanatory notes

Planning agreements are legal documents and may not be easily understood by the public. An explanatory note can help the public understand a planning agreement and facilitate informed discussion. The EP&A Regulation requires that an explanatory note is provided with the public notice of a planning agreement.

In practice, the explanatory note can be prepared by one of the parties but should be reviewed and agreed on by any other party to the agreement.

The explanatory note must help the broader community to simply and clearly understand what a planning agreement is proposing, how it delivers public benefit, and why it is acceptable and in the public interest. It should be easy to understand, written in plain English and address all considerations outlined in this practice note.

The explanatory note must:

- Identify how the agreement promotes the public interest.
- Identify whether the agreement conforms with the planning authority's capital works program, if any.
- State whether the agreement specifies that certain requirements of the agreement must be

Planning Agreements Practice Note - February 2021

complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

It should be possible for a person to be able to readily understand the nature of the development proposed and the public benefits to be provided. The explanatory note should indicate timing of delivery and should include maps, diagrams and other material to help explain what is proposed.

An explanatory note must summarise the objectives, nature and effect of the proposed agreement and contain an assessment of the merits of the proposed agreement, including the impact on the public or relevant section of the public.

Part 5 Examples of the use of planning agreements

Planning agreements have the potential to be used in a wide variety of planning circumstances and to achieve many different planning outcomes. Their use will be dictated by the circumstances of individual cases and the policies of planning authorities. Accordingly, it is not possible to set out all the circumstances in which a planning agreement may be appropriately entered into.

Below are some examples of the potential scope and application of planning agreements.

Compensation for loss or damage caused by development

Planning agreements can provide for development contributions that compensate for increased demand on the use of a public amenity, service, resource or asset that will or is likely to result from the carrying out the development.

For example, development may result in the loss of or increased impact on the provision of public open space, public car parking, public access, water and air quality, bushland, wildlife habitat or other natural areas.

The planning agreement could impose planning obligations directed towards replacing, substituting, or restoring the public amenity, service, resource or asset to an equivalent standard to that existing before the development is carried out.

In this way, planning agreements can offset development impacts that may otherwise be unacceptable.

Meeting demand created by development

Planning agreements can also provide for development contributions that meet the demand for new public infrastructure, amenities and services created by development. For example, development may create a demand for public transport, drainage services, public roads, public open space, streetscape and other public domain improvements, community and recreational facilities.

The public benefit provided under the agreement could be the provision, extension or improvement of public infrastructure, amenities and services to meet the additional demand created by the development. An agreement may be used to meet the requirements set out in a contributions plan in relation to certain land, or, potentially in the case of a large development area being delivered by one or a small number of developers, provide public amenities and services in lieu of preparing a contributions plan.

Prescribing inclusions in development

Planning agreements can be used to secure the implementation of particular planning policies by requiring development to incorporate particular elements that confer a public benefit.

Examples include agreements that require the provision of public facilities, open space or the retention of urban bushland. Agreements may also require development, in the public interest, to meet aesthetic standards, such as design excellence.

Providing benefits to the wider community

Planning agreements can also be used to secure the provision of broader benefits for the wider community. Broader benefits provided through planning agreements involve an agreement between a developer and a planning authority to allow the wider community to share in benefits

resulting from the development. The benefit may be provided in conjunction with planning obligations or other measures that address the impacts of the development on surrounding land or the wider community.

Alternatively, the benefit could wholly or partly replace such measures if the developer and the planning authority agree to a redistribution of the costs and benefits of development in order to allow the wider community, the planning authority and the developer to realise their specific preferences for the provision of public benefits.

Broader benefits may take the form of additional or better-quality public facilities than is required for a particular development. Alternatively, benefits may involve the provision of public facilities that, although not strictly required to make the development acceptable in planning terms, are not wholly unrelated to the development.

Recurrent funding

Planning agreements may provide for public benefits that take the form of development contributions towards the recurrent costs of infrastructure, facilities and services. Such benefits may relate to the recurrent costs of items that primarily serve the development to which the planning agreement applies or neighbouring development. In such cases, the planning agreement may establish an endowment fund managed by a trust, to pay for the recurrent costs of the relevant item.

For example, a planning agreement may fund the recurrent costs of water quality management in respect of development that will have a demonstrated impact on a natural watercourse that flows through or nearby to the development.

Broader benefits may also take the form of interim funding of the recurrent costs of infrastructure, facilities and services that will ultimately serve the wider community. The planning agreement would only require the developer to make such contributions until a public revenue stream is established to support the on-going costs of the facility.

Biodiversity offsetting

A planning agreement may make provision with respect to the offset of the impact on biodiversity values of proposed development, including by the retirement of biodiversity credits in accordance with the *Biodiversity Conservation Act 2016* (see section 7.18 of that Act).

City Planning & Environment Committee**8/03/2023**

Item No	CPE23.005
Subject	Information Report - Finalisation of Bayside LEP 2021 Translation (Employment Zones Reform)
Report by	Peter Barber, Director City Futures
File	F22/873

Summary

This report provides an update on the NSW Department of Planning and Environment's (DPE) translation of *Bayside Local Environmental Plan 2021* (BLEP 2021), under the State Government's Employment Zones Reform.

DPE has undertaken a process of simplifying and reducing the number of business and industrial land use zones available for use in Local Environmental Plans (LEPs). Essentially existing 'B' (Business) and 'IN' (Industrial) zones were replaced with a new, smaller suite of employment zones.

DPE has also led the translation of existing LEPs, including Bayside LEP 2021. In March 2022, Council considered a report on the translation and made a formal submission to DPE, including suggested amendments.

Exhibition of the translation of BLEP 2021 occurred from May to July 2022. The exhibited translation generally incorporated Council's suggested amendments, and a small number of post-exhibition amendments to the translation.

The translation was finalised by DPE on 14 December 2022. This includes a deferred commencement date for the changes to BLEP 2021 of 26 April 2023, and a transition clause which allows current land use permissibility to continue to apply for 2 years until 26 April 2025. This allows applicants to put forward development applications for land uses that were permitted under previous zonings, but will become prohibited under the new zones.

Officer Recommendation

That Council receives and this reports on the NSW Government's Employment Zones Reform and translation of *Bayside Local Environmental Plan 2021*.

Background

In 2021, the NSW Government introduced a number of planning reforms, with the aim of simplifying of the planning system, improving assessment timeframes and ultimately improving productivity.

One of these reforms is the Employment Zones Reform, which DPE first announced in May 2021. This involved the update of the *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument) by introducing a new, smaller suite of employment zones to replace existing 'B' (Business) and 'IN' (Industrial) zones, as well as introducing new mandatory zone objectives and permitted and prohibited land uses.

Justification for these changes was a recommendation made by the NSW Productivity Commission, to rationalise the number of employment zones in NSW, and to increase flexibility within the new zones to expand the land uses that are permitted.

The new zones identified in this framework are:

- E1 Local Centre
- E2 Commercial Centre
- E3 Productivity Support
- E4 General Industrial
- E5 Heavy Industrial
- MU1 Mixed Use
- W4 Working Waterfront
- SP4 Enterprise

DPE exhibited the position paper and employment zones framework in May-June 2021. Council made a submission on 29 June 2021, expressing several concerns, including:

- The proposed reduction in business and industrial zones will reduce the capacity of planning decision-makers to apply nuance in the planning system and seems contrary to the principles of placemaking and better design for community outcomes.
- Reconsideration of each zone and its application would be resource intensive and time consuming. There may be additional, unintended planning outcomes if Council and its staff are not able to adequately consider and plan for the proposed changes.
- The proposed reduction in business and industrial zones could also have implications for the protection of employment lands to continue to provide employment.

The new employment zones came into effect within the Standard Instrument in December 2021. Initially, the new zones sat alongside the existing B and IN zones in the Standard Instrument, while translations of existing LEPs occurred. The Standard Instrument was later amended again in December 2022 to repeal the B and IN zones.

Translation of Bayside Local Environmental Plan 2021

Preliminary Translation

In late 2021, DPE commenced translations of all LEPs across NSW to move from the old B and IN zones to the new E zones. This process was generally led by DPE, with the exception LGAs who were already in the process of updating their LEPs and were permitted to incorporate translations into this process. However, input was sought from councils to inform the details of the translations.

On 8 November 2021, DPE issued Council with its preliminary translation package of BLEP 2021. This included proposed zone mapping and land use tables for the LEP, comprising mandatory and suggested optional permitted and prohibited land uses for each new zone.

The preliminary translation proposed the following translations to BLEP 2021's Land Zoning Map (without any exceptions):

- B1 Neighbourhood Centre and B2 Local Centre to combine to become E1 Local Centre

- B3 Commercial Centre to become E2 Commercial Centre
- B4 Mixed Use to become MU1 Mixed Use
- B5 Business Development, B6 Enterprise Corridor and B7 Business Park to combine to become E3 Productivity Support
- IN1 General Industrial and IN2 Light Industrial to combine to become E4 General Industrial.

Each proposed new zone included mandatory objectives and permitted land uses. DPE also recommended optional objectives and permitted and prohibited land uses. These were largely drawn from the existing Land Use Table under BLEP 2021.

DPE requested technical feedback from Council by 31 January 2022, to enable sufficient time for DPE to make any changes prior to exhibition. DPE was advised Council would consider the proposal at its March 2022 meeting any further changes requested at this meeting be taken into consideration before commencing the exhibition.

On 23 March 2022, Council endorsed a formal submission to DPE. It acknowledged that the DPE zone translations are generally the best fit for Bayside LGA's business and industrial areas under the new zoning regime introduced by this reform. However, some refinements were suggested to certain optional objectives and permitted and prohibited land uses in the new zones. Further, a number of Additional Permitted Uses were suggested to be added to Schedule 1 of BLEP 2021, to continue permissibility of land uses over parts of new zones where they were previously permitted with consent.

The submission also reiterated the concerns raised by Council officers in responses to the initial Employment Zones Reform consultation. Council's formal submission is included at **Attachment 1**.

Exhibition

Exhibition of all DPE-led translations, including the translation to BLEP 2021, occurred between 31 May and 12 July 2022. This exhibition was organised by DPE and hosted on the NSW Planning Portal, while Council also notified the community on Have Your Say and directed viewers to comment on the translation via the Planning Portal.

There were 8 submissions received in relation to the translation of BLEP 2021, while a further 5 submissions were received containing general comments on translations under this reform that were of relevance to Bayside LGA.

The following key concerns or suggestions were contained in these submissions:

- General concerns over prohibiting of land uses in newly merged zones, that were previously permitted in one or more former zones.
- General concerns over increased use of Additional Permitted Uses (Schedule 1 of LEP) as mechanism for land use permissibility.
- Specific concerns over loss of permissibility of certain land uses over parts of newly merged zones, such as: *tourist and visitor accommodation* in Zones E1 and E3; *advertising structures* in Zone E3; and *recreational facilities (indoor)* in Zone E4.

- Specific concerns over prohibition of *food and drink premises* in Zone E3, which was partly or entirely permitted in former Zones B5, B6 and B7 and is inconsistent with Council's formal submission (which suggested it be permitted with consent).
- Concerns over "up-zoning" of former B1-zoned areas to Zone E1, which could place additional competition on former B2-zoned areas as well as E2-zoned land at Eastgardens Strategic Centre.

At the conclusion of this exhibition, DPE circulated all submissions to relevant councils for comment. Council staff reviewed the submissions relevant to BLEP 2021 and discussed the concerns raised with DPE, but declined to recommend a specific course of action in response. Instead, a number of broad options were put to DPE for consideration on how to respond to the submissions (including no change to the exhibited detail).

Post-exhibition Review

Following consideration of the submissions received, DPE made a small number of post-exhibition changes to the translation of BLEP 2021.

The post-exhibition changes included:

Pre-translation BLEP 2021	Exhibited translation	Post-exhibition change
Permitted with consent in former Zones B5 and B7 Prohibited in former Zone B6 (but sub-terms <i>take away food and drink premises</i> and <i>pubs</i> permitted with consent)	Prohibited in Zone E3	<i>Food and drink premises</i> now permitted with consent in Zone E3
Permitted with consent in former Zones B2 and B5 Prohibited in former Zones B1 and B6	Land use prohibited in Zones E1 and E3, but proposed Additional Permitted Use applied only to B2 and B5-zoned land in Mascot Strategic Centre (within Design Excellence boundary)	Amended proposed Additional Permitted Use to permit <i>tourist and visitor accommodation</i> with consent across entire former B2 and B5 zones (continue to prohibit use across remainder of Zones E1 and E3, respectively)
Permitted with consent in former Zones B5 and B6 Prohibited in former Zone B7	Land use prohibited in Zone E3 with no Additional Permitted Use	New Additional Permitted Use permitting <i>advertising structures</i> with consent across entire former B5 and B6 zones (continue to prohibit use across remainder of Zone E3)

No changes were made to the exhibited zones.

Finalisation of Translation of BLEP 2021

On 14 December 2022, the translation to BLEP 2021 was finalised by way of an amending SEPP – *State Environmental Planning Policy Amendment (Land Use Zones) 2022 (Attachment 2)*.

As confirmed in this amending instrument, the amendments to BLEP 2021 will come into force on 26 April 2023.

In addition, a savings and transitional clause has been introduced to the Standard Instrument, which states that development that was permitted with consent on land in a former zone in force prior to 26 April 2023 continues to be permitted with consent on that land until 26 April 2025. This allows applicants to put forward development applications during this period for land uses that were permitted under previous zonings, but will become prohibited under the new employment zones.

The net overall effect of the translation to the new zones in Bayside is not anticipated to be great. There are differences in permissibility for some properties between the old and new zones, however, these generally relate to a small number of uncommon land uses and will not translate into significantly different built outcomes on the ground.

Next Steps

DPE has advised that a housekeeping review will take place following finalisation of the LEP translations, but prior to the 26 April 2025 commencement. Council officers are assisting DPE with identifying any outstanding errors requiring further changes prior to this date.

Financial Implications

- | | |
|--------------------------------------|-------------------------------------|
| Not applicable | <input checked="" type="checkbox"/> |
| Included in existing approved budget | <input type="checkbox"/> |
| Additional funds required | <input type="checkbox"/> |

Community Engagement

DPE previously carried out community engagement on the proposed translation of BLEP 2021 between May and July 2022, as detailed above.

Attachments

- 1 Attachment 1 - Formal Submission to DPE - 23 March 2022 [↓](#)
- 2 Attachment 2 - State Environmental Planning Policy Amendment (Land Use Zones)(No.3) 2022 [↓](#)



Our Ref: 22/25137
Our Contact: Nigel Riley – 02 9562 1781

24 March 2022

Aoife Wynter
Director, Employment Zones
NSW Department of Planning and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Via email: Aoife.Wynter@planning.nsw.gov.au
Cc: employment.zones@planning.nsw.gov.au

Dear Ms Wynter

Re Employment Zone Reform – Bayside Local Environmental Plan 2021 Translation version 1

Thank you for the opportunity to respond to the preliminary translation of the proposed employment zones to be included in the *Bayside Local Environmental Plan 2021* (Bayside LEP 2021) under the Department of Planning and Environment's (DPE's) Employment Zones Reform.

A report on this matter was considered and endorsed by Bayside Council at its meeting on 23 March 2022. These comments represent the endorsed position of the elected Council.

Bayside Council wishes to reiterate concerns raised in a submission by Council staff, dated 29 June 2021, which responded to the Employment Zones Reform Preliminary Framework. These relate to the underlying principles and justifications of this reform. The submission noted that the differentiation of place by zoning and land use is often used by Council, Regional Panels and the Land and Environment Court, to guide deliberations and decision-making. A reduction in zones – in the case of the Bayside LEP 2021, from 9 business and industrial zones to 5 – will reduce the capacity to apply nuance in the planning system, and seems contrary to the principles of placemaking and better design for community.

The Bayside LEP 2021 was prepared by Council taking into account a 'line of sight' of strategic planning documents, including Council's Community Strategic Plan, Local Strategic Planning Statement and Local Housing Strategy. These plans were informed by the Greater Sydney Commission's (GSC) Greater Sydney Region Plan and Eastern City District Plan (ECDP). The Employment Zones Reform circumvents this statutory process by imposing significant changes to zoning and land use permissibility against and in the absence of specific advice from the GSC.

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In particular, the forced merger of the B1 Neighbourhood Centre and B2 Local Centre zones, is arguably inconsistent with the Eastern City District Plan Planning Priority E6: *Creating and renewing great places and local centres, and respecting the District's heritage*. This Priority establishes a hierarchy of local, strategic and metropolitan centres in the District. It explains that the management of local centres is predominantly led by councils, and that the importance of local centres will need to be assessed as part of the preparation of LSPSs and LEPs.

The proposed new E4 General Industrial zone is also arguably inconsistent with the Eastern City District Plan Planning Priority E12: *Retaining and managing industrial and urban services land*. The mandatory objective for current zones IN1 General Industrial and IN2 Light Industrial – *to support and protect industrial land for industrial uses* – has been omitted under this new zone. In its place is the weaker mandatory objective: *to ensure the efficient and viable use of land for industrial uses*. This wording could invite a greater number of incremental spot rezoning planning proposals within industrial precincts, on the premise that a site is no longer viable for industrial use.

This is contrary to the retain and manage direction set out in the ECDP by the GSC, which has been consistently applied by Council since given in 2018.

Council Response to Bayside LEP 2021 translation (Version 1.0)

Enclosed is a completed return translation template, including formal Council comments on DPE's Bayside LEP 2021 translation (version 1.0).

This submission represents, in the view of Bayside Council, the optimal approach to employment zoning and land use permissibility, within the parameters of the Employment Zones Reform. Council undertook detailed work, and had extensive consultation with DPE's Region Team (including issue of Gateway determination), regarding the preparation and finalisation of the Bayside LEP 2021, which was notified on 27 August 2021. The Land Use Tables for the current employment zones in the Bayside LEP 2021 were settled at that time, and have not changed since.

In some instances where an irreconcilable land use conflict arises from a merger of current zones and a prohibition of that land use is sought, a new Additional Permitted Use (APU) has been requested under Schedule 1 of the Bayside LEP 2021, in order to safeguard the permissibility of existing uses or potential future uses in one or more of the current zones.

These new APUs are put forward reluctantly and sparingly as they dilute the clarity and legibility of the plan, though are considered necessary to achieve good outcomes within the parameters of this reform process. Some relate to a specific site, while others relate to a broader catchment. In each instance, a map-based approach is required to identify the applicable sites. Council staff are available to further discuss with DPE how these APUs should be defined in the Bayside LEP 2021.

As an alternative to APUs, consideration was given to prohibiting certain uses that are currently permissible, and where approved and in operation, effectively creating Existing Use Rights over those premises. While a valid alternative approach, it tends to dilute transparency further. Council is open to discussing which approach DPE prefers in these situations.

Council officers are available to discuss any aspect of this matter and look forward to your feedback and further discussion on the attached return. Should you require further information please contact Nigel Riley on 9562 1781.

Yours sincerely



Peter Barber
Director City Futures

Encl. Return Translation Table with Bayside Council comments



Employment zones reform translation – Return Translation Detail

Bayside LEP 2021 – Council response to version 1 translation

DRAFT FOR DISCUSSION PURPOSES | VERSION 1.0

Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



RETURN TRANSLATION DETAIL NOTE: PLEASE ENSURE THAT THE TITLE PAGE AND HEADER IS UPDATED WITH THE LEP'S NAME AND YEAR.

1. Confirmation of zone selection

E1 Local Centre		
Confirm zone is correct Y/N	Entire zone not appropriate or Specific zone incorrectly applied to an area	Council comment
Y		

E2 Commercial Centre		
Confirm zone is correct Y/N	Entire zone not appropriate or Specific zone incorrectly applied to an area	Council comment
Y		

E3 Productivity Support		
Confirm zone is correct Y/N	Entire zone not appropriate or	Council comment

FOR DISCUSSION PURPOSES | Return Translation Detail for Council to fill in - Preliminary Translation Version 1.0 | 2

Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



	Specific zone incorrectly applied to an area	
Y		

E4 General Industrial		
Confirm zone is correct Y/N	Entire zone not appropriate or Specific zone incorrectly applied to an area	Council comment
Y		

MU1 Mixed Use		
Confirm zone is correct Y/N	Entire zone not appropriate or Specific zone incorrectly applied to an area	Council comment
Y		

2. Local zone objectives

E1 Local Centre			
Local objective	DPE recommendation	Council comment	Amended or new local objective (where

FOR DISCUSSION PURPOSES | Return Translation Detail for Council to fill in - Preliminary Translation Version 1.0 | 3

Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



	(retain delete or amend)		applicable)
To ensure development within the zone does not detract from the economic viability of commercial centres (B1 Objective 2)	Retained	Support. It is noted that this objective is taken from current Zone B1. The original intent of the objective was to differentiate Zone B1 from B2 in the centres hierarchy (ensuring development in B1 did not detract from the viability of other centres). However, the distinction is now lost and the term "commercial centre" now refers to the new name for B3 Commercial Core. Although the new zoning will not be able to differentiate between former B1 and B2 land, Council requests a new objective below that better guides built form across the new zone, through a reference to accessibility.	
To ensure the scale of development is compatible with the existing streetscape and does not adversely impact on residential amenity (B1 Objective 3)	Retained	Support	

FOR DISCUSSION PURPOSES | Return Translation Detail for Council to fill in - Preliminary Translation Version 1.0 | 4

Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



To encourage appropriate employment opportunities in accessible locations (B2 Objective 2)	Amended as new mandatory objective	Key elements of current zones B1 and B2 are generally carried over, but accessibility is excluded. As the two zones will merge, broadening the range of contexts where B2-style development could now occur, a reference to accessibility is requested to better guide built form outcomes.	New objective is requested: To ensure built form and land uses are commensurate with the level of accessibility, to and from the centre, by public transport, walking and cycling.
To maximise public transport patronage and encourage walking and cycling (B2 Objective 3)	Deleted		
To create lively town centres with pedestrian focused public domain activated by adjacent building uses and landscape elements (B2 Objective 4)	Deleted	This objective has been omitted under the new zone. The only reference to creating vibrant centres is through a residential-related mandatory objective, while another encourages ground floor non-residential uses. B2 Objective 4 could still perform a function guiding types of centre development not fully covered elsewhere.	Re-inclusion of B2 Objective 4 is requested
To accommodate population growth in the Rockdale town centre through high density residential uses that complement retail, commercial and cultural premises in the town centre (B2 Objective 5)	Deleted	Council is satisfied this is adequately covered in other proposed objectives.	

FOR DISCUSSION PURPOSES | Return Translation Detail for Council to fill in - Preliminary Translation Version 1.0 | 5

Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



E2 Commercial Centre			
Local objective ¹	DPE recommendation (retain delete or amend)	Council comment	Amended or new local objective (where applicable)
To encourage appropriate employment opportunities in accessible locations (B3 Objective 2)	Amended as new mandatory objective	Although the strategic framework views Commercial Centres as focal points for living, working and visiting, which in principle, negates the need for this objective, there are existing accessibility shortcomings at the current B3 zone at Eastgardens. As with Zone E1 above, the proposed objectives lack references to accessibility (to and from the centre). A reference to accessibility is requested to better guide built form outcomes.	New objective is requested: To ensure built form and land uses are commensurate with the level of accessibility, to and from the centre, by public transport, walking and cycling.
To maximise public transport patronage and encourage walking and cycling (B3 Objective 3)	Deleted		

E3 Productivity Support			
Local objective ¹	DPE recommendation (retain delete or amend)	Council comment	Amended or new local objective (where applicable)
To promote redevelopment that is likely to contribute to the locality, including by improving the visual character of the locality, improving	Retained	Support	

FOR DISCUSSION PURPOSES | Return Translation Detail for Council to fill in - Preliminary Translation Version 1.0 | 6

Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



access and parking, reducing land use conflicts and increasing amenity for nearby residential development (B6 Objective 4)			
To encourage uses in arts, technology, production and design sectors (B7 Objective 4)	Retained	Support	
To promote businesses along main roads and to encourage a mix of compatible uses (B6 Objective 1)	Deleted	There is currently no objective that clearly identifies the economic role of major road corridors (such as Princes Highway), although there are mandatory objectives covering certain uses associated with enterprise corridors. Council's local planning evidence base earmarks this ongoing economic function in detail.	Re-inclusion of B6 Objective 1 is requested.

E4 General Industrial			
Local objective ¹	DPE recommendation (retain delete or amend)	Council comment	Amended or new local objective (where applicable)
To support and protect industrial land for industrial uses (IN1 Objective 4, IN2 Objective 5)	Deleted	This objective has been replaced with a new, seemingly weaker objective – To ensure the efficient and viable use of land for industrial uses. A new objective is	New local objective requested: To ensure adequate protection of industrial land and uses, in line with the strategic direction to retain and manage industrial and urban services land.

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



		requested that reflects the current Retain and Manage approach to industrial and urban services land and better protects industrial land from attempts to rezone it for retail or residential uses.	
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MU1 Mixed Use			
Local objective ¹	DPE recommendation (retain delete or amend)	Council comment	Amended or new local objective (where applicable)
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling (B4 Objective 2)	Deleted	As with Zones E1 and E2 above, the proposed new objectives lack a reference to accessibility. There is an objective referencing diverse and active street frontages to attract pedestrian traffic, but no equivalent reference to accessibility to and from the zone.	New objective is requested: To ensure built form and land uses are commensurate with the level of accessibility, to and from the zone, by public transport, walking and cycling.

3. Permitted with or without consent

E1 Local Centre		
Land uses	Permitted without consent	Permitted with consent

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Home businesses	Y	
Home occupations	Y	
Home industries		Y
Building identification signs		Y
Business identification signs		Y
Roads		Y

PRELIMINARY TRANSLATION

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



E2 Commercial Centre		
Land uses	Permitted without consent	Permitted with consent
Home businesses		Y
Home occupations		Y
Home industries		Y
Building identification signs		Y
Business identification signs		Y
Roads		Y

E3 Productivity Support		
Land uses	Permitted without consent	Permitted with consent
Home industries		Y
Building identification signs		Y
Business identification signs		Y
Roads		Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



E4 General Industrial		
Land uses	Permitted without consent	Permitted with consent
Building identification signs		Y
Business identification signs		Y
Roads		Y

MU1 Mixed Use		
Land uses	Permitted without consent	Permitted with consent
Building identification signs		Y
Business identification signs		Y
Roads		Y

4. Other land uses

E1 Local Centre			
Land use	Permitted without consent	Permitted with consent	Prohibited

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Advertising structures			Y
Agriculture			Y
Air transport facilities			Y
Airstrips			Y
Animal boarding or training establishments			Y
Backpackers accommodation			Y
Bed and breakfast accommodation		Y	
Biosolids treatment facilities			Y
Boat building and repair facilities			Y
Boat launching ramps			Y
Boat sheds			Y
Camping grounds			Y
Caravan parks			Y
Cemeteries			Y
Charter and tourism boating facilities			Y
Correctional centres			Y
Crematoria			Y
Depots			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Dwelling houses			Y
Eco-tourist facilities			Y
Educational establishments		Y	
Exhibition villages			Y
Extractive industries			Y
Farm buildings			Y
Farm stay accommodation			Y
Forestry			Y
Freight transport facilities			Y
Group homes		Y	
Health services facilities		Y	
Heavy industrial storage establishments			Y
Helipads			Y
Highway service centres			Y
Home occupations (sex services)			Y
Hospitals			Y
Hostels		Y	
Industrial retail outlets			Y
Industrial training facilities			Y

FOR DISCUSSION PURPOSES | Return Translation Detail for Council to fill in - Preliminary Translation Version 1.0 | 13

Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Industries			Y
Jetties			Y
Marinas			Y
Mooring pens			Y
Moorings			Y
Open cut mining			Y
Passenger transport facilities		Y	
Port facilities			Y
Recreation areas		Y	
Recreation facilities (major)			Y
Registered clubs			Y (New Additional Permitted Use requested below)
Research stations			Y
Residential accommodation			Y
Restricted premises			Y (New Additional Permitted Use requested below)
Rural industries			Y
Serviced apartments			Y
Sewage treatment plants			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Sex services premises			Y (New Additional Permitted Use requested below)
Storage premises			Y
Tourist and visitor accommodation			Y (New Additional Permitted Use requested below)
Transport depots			Y
Truck depots			Y
Vehicle body repair workshops			Y
Vehicle repair stations			Y
Warehouse or distribution centres			Y
Waste or resource management facilities			Y
Water recreation structures			Y
Wharf or boating facilities			Y
Wholesale supplies			Y

E2 Commercial Centre			
Land use	Permitted without consent	Permitted with consent	Prohibited
Advertising structures			Y

FOR DISCUSSION PURPOSES | Return Translation Detail for Council to fill in - Preliminary Translation Version 1.0 | 15

Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Agriculture			Y
Air transport facilities			Y
Airstrips			Y
Animal boarding or training establishments			Y
Biosolids treatment facilities			Y
Boat building and repair facilities			Y
Boat launching ramps			Y
Boat sheds			Y
Camping grounds			Y
Caravan parks			Y
Cemeteries			Y
Charter and tourism boating facilities			Y
Correctional centres			Y
Crematoria			Y
Depots			Y
Eco-tourist facilities			Y
Electricity generating works			Y
Environmental facilities			Y

FOR DISCUSSION PURPOSES | Return Translation Detail for Council to fill in - Preliminary Translation Version 1.0 | 16

Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Exhibition homes			Y
Exhibition villages			Y
Extractive industries			Y
Farm buildings			Y
Forestry			Y
Freight transport facilities			Y
Heavy industrial storage establishments			Y
Helipads			Y
Highway service centres			Y
Home based child care			Y
Home occupations (sex services)			Y
Industrial retail outlets			Y
Industrial training facilities			Y
Industries			Y
Jetties			Y
Marinas			Y
Mooring pens			Y
Moorings			Y
Open cut mining			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Port facilities			Y
Recreation facilities (major)			Y
Research stations			Y
Residential accommodation			Y
Resource recovery facilities			Y
Rural industries			Y
Sewage treatment plants			Y
Sex services premises			Y
Storage premises			Y
Transport depots			Y
Truck depots			Y
Vehicle body repair workshops			Y
Warehouse or distribution centres			Y
Waste disposal facilities			Y
Waste or resource management facilities			Y
Water recreation structures			Y
Water recycling facilities			Y
Water supply systems			Y
Wharf or boating facilities			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Wholesale supplies			Y
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E3 Productivity Support			
Land use	Permitted without consent	Permitted with consent	Prohibited
Advertising structures			Y
Agriculture			Y
Air transport facilities			Y
Airstrips			Y
Amusement centres			Y
Biosolids treatment facilities			Y
Boat launching ramps			Y
Boat sheds			Y
Camping grounds			Y
Caravan parks			Y
Cemeteries			Y
Charter and tourism boating facilities			Y
Correctional centres			Y
Crematoria			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Eco-tourist facilities			Y
Electricity generating works			Y
Entertainment facilities			Y
Environmental facilities			Y
Environmental protection works			Y
Exhibition homes			Y
Exhibition villages			Y
Extractive industries			Y
Farm buildings			Y
Food and drink premises		Y	
Forestry			Y
Freight transport facilities			Y
General industries			
Heavy industrial storage establishments			Y
Helipads			Y
High technology industries		Y	
Highway service centres			Y
Home based child care			Y
Home businesses		Y	

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Home occupations (sex services)			Y
Industries			Y
Jetties			Y
Kiosks		Y	
Marinas			Y
Mooring pens			Y
Moorings			Y
Mortuaries		Y	
Open cut mining			Y
Port facilities			Y
Public administration buildings			Y
Pubs		Y	
Registered clubs			Y
Residential accommodation			Y
Resource recovery facilities			Y
Restricted premises			Y
Retail premises			Y
Rural industries			Y
Sewage treatment plants			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Sex services premises			Y
Tourist and visitor accommodation			Y (New Additional Permitted Use requested below)
Transport depots			Y
Truck depots			Y
Waste disposal facilities			Y
Waste or resource management facilities			Y (New Additional Permitted Use requested below)
Water recreation structures			Y
Water recycling facilities			Y
Water supply systems			Y
Wharf or boating facilities			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



E4 General Industrial			
Land use	Permitted without consent	Permitted with consent	Prohibited
Advertising structures			Y
Agriculture			Y
Air transport facilities			Y
Airstrips			Y
Amusement centres			Y
Boat launching ramps			Y
Boat sheds			Y
Camping grounds			Y
Caravan parks			Y
Cemeteries			Y
Centre based child care facilities			Y
Charter and tourism boating facilities			Y
Commercial premises			Y
Community facilities			Y
Correctional centres			Y
Crematoria		Y	

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Eco-tourist facilities			Y
Educational establishments			Y
Entertainment facilities			Y
Environmental facilities			Y
Environmental protection works			Y
Exhibition homes			Y
Exhibition villages			Y
Extractive industries			Y
Farm buildings			Y
Forestry			Y
Function centres			Y
Health services facilities			Y
Heavy industrial storage establishments			Y
Heavy industries			Y
Helipads			Y
Highway service centres			Y
Home based child care			Y
Home businesses			Y
Home occupations			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Home occupations (sex services)			Y
Information and education facilities			Y
Jetties			Y
Kiosks		Y	
Marinas			Y
Mooring pens			Y
Moorings			Y
Mortuaries		Y	
Open cut mining			Y
Places of public worship		Y	
Port facilities			Y
Public administration buildings			Y
Recreation facilities (indoor)			Y (New Additional Permitted Use requested below)
Recreation facilities (major)			Y
Recreation facilities (outdoor)			Y
Registered clubs			Y
Residential accommodation			Y
Respite day care centres			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Restaurants or cafes			Y (New Additional Permitted Use requested below)
Restricted premises			Y (New Additional Permitted Use requested below)
Rural industries			Y
Sewerage systems		Y	
Timber yards		Y	
Tourist and visitor accommodation			Y
Veterinary hospitals			Y
Waste or resource management facilities		Y	
Water recreation structures			Y
Water supply systems		Y	
Wharf or boating facilities			Y

MU1 Mixed Use			
Land use	Permitted without consent	Permitted with consent	Prohibited
Advertising structures			Y
Agriculture			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Air transport facilities			Y
Airstrips			Y
Animal boarding or training establishments			Y
Biosolids treatment facilities			Y
Boat building and repair facilities			Y
Boat launching ramps			Y
Boat sheds			Y
Camping grounds			Y
Caravan parks			Y
Cemeteries			Y
Charter and tourism boating facilities			Y
Correctional centres			Y
Crematoria			Y
Depots			Y
Dwelling houses			Y
Eco-tourist facilities			Y
Exhibition homes		Y	
Exhibition villages			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Extractive industries			Y
Farm buildings			Y
Forestry			Y
Freight transport facilities			Y
Group homes		Y	
Heavy industrial storage establishments			Y
Highway service centres			Y
Home based child care	Y		
Home businesses	Y		
Home occupations	Y		
Home occupations (sex services)			Y
Hostels		Y	
Industrial training facilities			Y
Industries			Y
Jetties			Y
Marinas			Y
Mooring pens			Y
Moorings			Y
Open cut mining			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Port facilities			Y
Recreation facilities (major)			Y
Research stations			Y
Residential accommodation			Y
Residential flat buildings		Y	
Restricted premises			Y
Rural industries			Y
Sewage treatment plants			Y
Sex services premises			Y
Storage premises			Y
Transport depots			Y
Truck depots			Y
Vehicle body repair workshops			Y
Vehicle repair stations			Y
Warehouse or distribution centres			Y
Waste or resource management facilities			Y
Waste or resource transfer stations		Y	
Wharf or boating facilities			Y
Wholesale supplies			Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



5. Pond-based aquaculture

Zone	Pond-based aquaculture	
	Permitted with consent	Prohibited
E1 Local Centre		Y
E2 Commercial Centre		Y
E3 Productivity Support		Y
E4 General Industrial		Y
MU1 Mixed Use		Y

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



6. Tank-based aquaculture

Zone	Tank-based aquaculture	
	Permitted with consent	Prohibited
N/A		

PRELIMINARY TRANSLATION

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



7. Local distribution premises

Local distribution premises		
Zone	Permitted with consent or prohibited	Justification
N/A		

PRELIMINARY TRANSLATION

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



8. Local provisions

Local Provisions			
Local provision clause ¹	DPE recommendation	Council comment	Amended local provision (if applicable)
N/A			

PRELIMINARY TRANSLATION

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



9. Schedule 1 – Additional permitted uses

Site*	Schedule 1		Council comment
	Schedule 1 provision ¹	Reason for removal / inclusion	
Schedule 1, cl.4, certain land at 1024–1044 Botany Road, Botany Lot 1, DP 826172, Lot 1, DP 590790 and Lots 1, 2 and 6–10, DP 7826	Permits light industries, industrial retail outlets, self-storage units, vehicle body repair workshops and vehicle repair stations (land zoned B5)	DPE proposes removal: All additional permitted uses permitted in E3.	Support
Schedule 1, cl.11, certain land at 102 Maloney Street, Eastlakes Lot 100, DP 740358	Permits service station (land zoned B1)	DPE proposes removal: Service stations mandated in E1.	Support
Schedule 1, cl.24, certain land at 321 Gardeners Road, Rosebery Lot 100, DP 1088772	Permits service station (land zoned B1)	DPE proposes removal: Service stations mandated in E1.	Support
Schedule 1, cl.26, certain land at 409 Gardeners Road, Rosebery Lot 1, DP 217097 and Lot 5, DP 223717	Permits entertainment facilities, function centres and hotel or motel accommodation (land zoned B1)	DPE proposes removal: All uses mandated in E1.	Support
Proposed new item: Certain land at 32 Bay Street, Rockdale Lot 1 DP 1094695, Lot 14 Sec 1 DP 1547	Proposed Additional Permitted Use: Permits registered clubs	Council: To allow continuation of permissibility on site of existing use while prohibiting the use elsewhere in Zone E1	
Proposed new item:	Proposed Additional	Council: To allow continuation of permissibility on land in	

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



Land in Mascot Strategic Centre (land within Mascot DEX boundary currently zoned B2 and B5) New map boundary required	Permitted Use: Permits Tourist and visitor accommodation	Mascot Strategic Centre, while prohibiting the use elsewhere in Zones E1 and E3 Important Note: This would involve permitting the use on land currently zoned B2 Local Centre and B5 Business Development within the Design Excellence Area of the Mascot Station Town Centre Precinct only . It would be a prohibited use everywhere else in Zones E1 and E3.	
Proposed new item: Certain land at 471 Princes Highway, Rockdale Lot 2 DP 112857	Proposed Additional Permitted Use: Permits Restricted Premises	Council: To allow continuation of permissibility on site of existing use while prohibiting the use elsewhere in Zone E1	
Proposed new item: Certain land at 17 The Seven Ways, Rockdale Lot 8 DP 12036, Lot 9 DP 12036	Proposed Additional Permitted Use: Permits Sex Services Premises	Council: To allow continuation of permissibility on site of existing use while prohibiting the use elsewhere in Zone E1	
Proposed new item: Land currently zoned B5 and B7 New map boundary required	Proposed Additional Permitted Use: Waste or resource transfer stations	Council: To allow continuation of permissibility across land currently zoned B5 and B7, in acknowledgement of potential future uses, while prohibiting the use elsewhere in Zone E3	
Proposed new item: Certain land at 55 Kent Road, Mascot and 293 Coward Street, Mascot Lot X DP 408199, PT 2 DP 1063293	Proposed Additional Permitted Use: Restaurants or cafes	Council: To allow continuation of permissibility on site of existing use while prohibiting the use elsewhere in Zone E4	
Proposed new item: Land currently zoned IN2 New map boundary required	Proposed Additional Permitted Use: Recreation facilities (indoor)	Council: To allow continuation of permissibility across land currently zoned IN2, acknowledging clusters of existing uses in this zone, while prohibiting the use elsewhere in Zone E4	

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



<p>Proposed new item: Certain land at 12 Production Avenue and 13 Production Avenue, Kogarah Lot 30 DP 29275, Lot 12 DP 29275</p>	<p>Proposed Additional Permitted Use: Permits Restricted Premises</p>	<p>Council: To allow continuation of permissibility on site of existing use while prohibiting the use elsewhere in Zone E4</p>	
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PRELIMINARY TRANSLATION

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Employment zones reform

Preliminary translation of Bayside LEP 2021 land use tables



10. Other zone or land use matters to be considered

<Zone>	
Land use	Proposed change
N/A	

PRELIMINARY TRANSLATION

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New South Wales

State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

ANTHONY ROBERTS, MP
Minister for Planning

Published LW 16 December 2022 (2022 No 829)

State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022 [NSW]

State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022*.

2 Commencement

This Policy commences on 26 April 2023 and is required to be published on the NSW legislation website.

3 Repeal of Policy

This Policy is repealed at the beginning of the day following the day on which this Policy commences.

4 Maps

The maps adopted by the local environmental plans amended in Schedule 1 are amended or replaced, as the case requires, by the maps approved by the Minister on the making of this Policy.

State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022 [NSW]
Schedule 1 Amendment of local environmental plans

Schedule 1 Amendment of local environmental plans

1.1 Bayside Local Environmental Plan 2021

[1] Clause 2.1 Land use zones

Omit the matter relating to **Business Zones** and **Industrial Zones**. Insert instead—

Employment Zones

E1 Local Centre

E2 Commercial Centre

E3 Productivity Support

E4 General Industrial

Mixed Use Zones

MU1 Mixed Use

[2] Land Use Table

Omit the matter relating to Zones B1, B2, B3, B4, B5, B6, B7, IN1 and IN2.

Insert instead—

Zone E1 Local Centre

1 Objectives of zone

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To ensure development within the zone does not detract from the economic viability of commercial centres.
- To ensure the scale of development is compatible with the existing streetscape and does not adversely impact on residential amenity.
- To ensure built form and land uses are commensurate with the level of accessibility, to and from the centre, by public transport, walking and cycling.
- To create lively town centres with pedestrian focused public domain activated by adjacent building uses and landscape elements.
- To accommodate population growth in the Rockdale town centre through high density residential uses that complement retail, commercial and cultural premises in the town centre.

2 Permitted without consent

Home-based child care; Home businesses; Home occupations

State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022 [NSW]
 Schedule 1 Amendment of local environmental plans

3 Permitted with consent

Amusement centres; Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Function centres; Group homes; Home industries; Hostels; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation facilities (indoor); Respite day care centres; Service stations; Shop top housing; Tank-based aquaculture; Veterinary hospitals; Waste or resource transfer stations; Any other development not specified in item 2 or 4

4 Prohibited

Advertising structures; Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Moorings; Mooring pens; Open cut mining; Port facilities; Recreation facilities (major); Registered clubs; Research stations; Residential accommodation; Restricted premises; Rural industries; Sewage treatment plants; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Wharf or boating facilities; Wholesale supplies

Zone E2 Commercial Centre

1 Objectives of zone

- To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.
- To encourage investment in commercial development that generates employment opportunities and economic growth.
- To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.
- To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- To ensure that built form and land uses are commensurate with the level of accessibility, to and from the centre, by public transport, walking and cycling.

2 Permitted without consent

Nil

State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022 [NSW]
Schedule 1 Amendment of local environmental plans

3 Permitted with consent

Amusement centres; Artisan food and drink industries; Backpackers' accommodation; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Function centres; Home industries; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Mortuaries; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restricted premises; Tank-based aquaculture; Vehicle repair stations; Veterinary hospitals; Any other development not specified in item 2 or 4

4 Prohibited

Advertising structures; Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home-based child care; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Moorings; Mooring Pens; Open cut mining; Port facilities; Recreation facilities (major); Research stations; Residential accommodation; Resource recovery facilities; Rural industries; Sewage treatment plants; Sex services premises; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste disposal facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies

Zone E3 Productivity Support

1 Objectives of zone

- To provide a range of facilities and services, light industries, warehouses and offices.
- To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.
- To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.
- To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.
- To provide opportunities for new and emerging light industries.
- To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.
- To promote redevelopment that is likely to contribute to the locality, including by improving the visual character of the

State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022 [NSW]
 Schedule 1 Amendment of local environmental plans

locality, improving access and parking, reducing land use conflicts and increasing amenity for nearby residential development.

- To encourage uses in arts, technology, production and design sectors.
- To promote businesses along main roads and to encourage a mix of compatible uses.

2 Permitted without consent

Home occupations

3 Permitted with consent

Animal boarding or training establishments; Boat building and repair facilities; Business premises; Centre-based child care facilities; Community facilities; Depots; Food and drink premises; Function centres; Garden centres; Hardware and building supplies; Hotel or motel accommodation; Industrial retail outlets; Industrial training facilities; Information and education facilities; Landscaping material supplies; Light industries; Local distribution premises; Markets; Mortuaries; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Research stations; Respite day care centres; Rural supplies; Service stations; Specialised retail premises; Storage premises; Take away food and drink premises; Tank-based aquaculture; Timber yards; Vehicle body repair workshops; Vehicle repair stations; Vehicle sales or hire premises; Veterinary hospitals; Warehouse or distribution centres; Wholesale supplies; Any other development not specified in item 2 or 4

4 Prohibited

Advertising structures; Agriculture; Air transport facilities; Airstrips; Amusement centres; Biosolids treatment facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Eco-tourist facilities; Electricity generating works; Entertainment facilities; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home-based child care; Home businesses; Home occupations (sex services); Industries; Jetties; Marinas; Moorings; Mooring Pens; Mortuaries; Open cut mining; Port facilities; Registered clubs; Residential accommodation; Restricted premises; Retail premises; Rural industries; Sewage treatment plants; Sex services premises; Tourist and visitor accommodation; Transport depots; Truck depots; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities

State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022 [NSW]
Schedule 1 Amendment of local environmental plans

Zone E4 General Industrial

1 Objectives of zone

- To provide a range of industrial, warehouse, logistics and related land uses.
- To ensure the efficient and viable use of land for industrial uses.
- To minimise any adverse effect of industry on other land uses.
- To encourage employment opportunities.
- To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.
- To ensure adequate protection of industrial land and uses, in line with the strategic direction to retain and manage industrial land and land for urban services.

2 Permitted without consent

Nil

3 Permitted with consent

Depots; Freight transport facilities; Garden centres; General industries; Goods repair and reuse premises; Hardware and building supplies; Industrial retail outlets; Industrial training facilities; Kiosks; Light industries; Local distribution premises; Neighbourhood shops; Oyster aquaculture; Take away food and drink premises; Tank-based aquaculture; Timber yards; Warehouse or distribution centres; Any other development not specified in item 2 or 4

4 Prohibited

Advertising structures; Agriculture; Air transport facilities; Airstrips; Amusement centres; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Centre-based child care facilities; Charter and tourism boating facilities; Commercial premises; Community facilities; Correctional centres; Eco-tourist facilities; Educational establishments; Entertainment facilities; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Function centres; Health services facilities; Heavy industrial storage establishments; Heavy industries; Helipads; Highway service centres; Home-based child care; Home businesses; Home occupations; Home occupations (sex services); Information and education facilities; Jetties; Marinas; Moorings; Mooring Pens; Open cut mining; Passenger transport facilities; Port facilities; Public administration buildings; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Residential accommodation; Respite day care centres; Restricted premises; Rural industries; Tourist and visitor accommodation; Veterinary hospitals; Water recreation structures; Wharf or boating facilities

Zone MU1 Mixed Use

1 Objectives of zone

- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022 [NSW]
Schedule 1 Amendment of local environmental plans

- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To ensure built form and land uses are commensurate with the level of accessibility, to and from the zone, by public transport, walking and cycling.

2 Permitted without consent

Home-based child care; Home businesses; Home occupations

3 Permitted with consent

Amusement centres; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Function centres; Group homes; Hostels; Information and education facilities; Light industries; Local distribution premises; Medical centres; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Shop top housing; Tank-based aquaculture; Tourist and visitor accommodation; Waste or resource transfer stations; Vehicle repair stations; Any other development not specified in item 2 or 4

4 Prohibited

Advertising structures; Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Highway service centres; Home occupations (sex services); Industrial training facilities; Industries; Jetties; Marinas; Moorings; Mooring Pens; Open cut mining; Port facilities; Recreation facilities (major); Research stations; Residential accommodation; Rural industries; Sewage treatment plants; Sex services premises; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste or resource management facilities; Wharf or boating facilities; Wholesale supplies

[3] Clauses 5.1(2) and 5.1A(3)

Omit “Zone B2” wherever occurring from the tables. Insert instead “Zone E1”.

[4] Clauses 5.1(2) and 5.1A(3)

Omit “Zone B4” wherever occurring from the tables. Insert instead “Zone MU1”.

[5] Schedule 1 Additional permitted uses

Omit clauses 1, 2, 4, 11, 24 and 26.

State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022 [NSW]
Schedule 1 Amendment of local environmental plans

[6] Schedule 1

Insert at the end of the Schedule, with appropriate clause numbering—

Use of land at 32 Bay Street, Rockdale

- (1) This clause applies to Lot 14, Section 1, DP 1547 and Lot 1, DP 1094695, 32 Bay Street, Rockdale, identified as “36” on the Additional Permitted Uses Map.
- (2) Development for the purposes of a single registered club is permitted with development consent.

Use of land at 471 Princes Highway, Rockdale

- (1) This clause applies to Lot 2, DP 112857, 471 Princes Highway, Rockdale, identified as “37” on the Additional Permitted Uses Map.
- (2) Development for the purposes of restricted premises is permitted with development consent.

Use of land at 17 The Seven Ways, Rockdale

- (1) This clause applies to Lot 8, DP 12036, 17 The Seven Ways, Rockdale, identified as “38” on the Additional Permitted Uses Map.
- (2) Development for the purposes of sex services premises is permitted with development consent.

Use of certain land in Zone E3

- (1) This clause applies to land in Zone E3, identified as “39” on the Additional Permitted Uses Map.
- (2) Development for the purposes of waste or resource transfer stations is permitted with development consent.

Use of land at 55 Kent Road and 293 Coward Street, Mascot

- (1) This clause applies to the following land at Mascot, identified as “40” on the Additional Permitted Uses Map—
 - (a) Lot X, DP 408199, 55 Kent Road, and
 - (b) Lot 2, DP 1063293, 293 Coward Street.
- (2) Development for the purposes of restaurants or cafes is permitted with development consent.

Use of certain land in Zone E4

- (1) This clause applies to land in Zone E4, identified as “41” on the Additional Permitted Uses Map.
- (2) Development for the purposes of recreation facilities (indoor) is permitted with development consent.

Use of land at 12 and 13 Production Avenue, Kogarah

- (1) This clause applies to Lots 30 and 12, DP 29275, 12 and 13 Production Avenue, Kogarah, identified as “42” on the Additional Permitted Uses Map.
- (2) Development for the purposes of restricted premises is permitted with development consent.

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Use of certain land in Zones E1 and E3

- (1) This clause applies to land in Zones E1 and E3, identified as “43” on the Additional Permitted Uses Map.
- (2) Development for the purposes of tourist and visitor accommodation is permitted with development consent.

Use of certain land in Zone E3

- (1) This clause applies to land in Zone E3, identified as “44” on the Additional Permitted Uses Map.
- (2) Development for the purposes of advertising structures is permitted with development consent.

1.2 Bega Valley Local Environmental Plan 2013

[1] Clause 2.1 Land use zones

Omit the matter relating to **Business Zones** and **Industrial Zones**. Insert instead—

Employment Zones

E1 Local Centre
E2 Commercial Centre
E3 Productivity Support
E4 General Industrial
E5 Heavy Industrial

Mixed Use Zones

MU1 Mixed Use

[2] Clause 2.1, matter relating to Waterway Zones

Insert in appropriate order—

W4 Working Waterfront

[3] Land Use Table

Omit the matter relating to Zones B1, B2, B4, B5, IN1, IN2 and IN4. Insert instead—

Zone E1 Local Centre

1 Objectives of zone

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council’s strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To strengthen the viability of existing business centres as places for investment, employment and cultural activity.

City Planning & Environment Committee

8/03/2023

Item No	CPE23.006
Subject	Draft Planning Proposal - Heritage Conservation Areas
Report by	Peter Barber, Director City Futures
File	SF21/5100

Summary

A draft Planning Proposal for potential Heritage Conservation Areas (HCAs) has been prepared, in response to actions initiated by a Council resolution in November 2020.

Based on the results of an independent desktop review by the independent Heritage Consultant (Niche), as recommended by the Bayside Local Planning Panel, this draft PP proposes to proceed with the creation of four HCAs under the *Bayside Local Environmental Plan 2021* (BLEP 2021), being:

- Brighton Parade, Brighton Le Sands
- Hamilton and Lansdowne Street, Bardwell Valley
- Gibbs and Farr Streets, Banksia
- Ocean View Estate, Bexley.

This draft PP is to be accompanied by proposed draft DCP controls. These controls consist of site-specific objectives and controls to inform development proposed within each of the HCAs and would be in addition to the general DCP provisions and controls for HCAs in the recently exhibited draft Bayside DCP 2022.

It is intended that this draft PP will:

- Create four Heritage Conservation Areas in Banksia, Bardwell Valley, Brighton Le Sands, and Ocean View Estate, Bexley within the *Bayside Local Environmental Plan 2021* (BLEP 2021); and
- Create controls within the current relevant Development Control Plan (DCP) to protect the character and streetscape within the relevant HCAs.

Officer Recommendation

- 1 That the draft Planning Proposal be updated to include the changes proposed by the independent Heritage Consultant, as outlined in this report.
 - 2 That, pursuant to s3.34 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the updated draft Planning Proposal be submitted to the Department of Planning and Environment for a Gateway Determination.
 - 3 That, pursuant to Clause 14 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation), the proposed draft Development Control Plan amendments be endorsed for public exhibition for a period of no less than 28 days, and be exhibited concurrently with the draft Planning Proposal, should a Gateway determination for the draft Planning Proposal be issued.
-

- 4 That, should a Gateway Determination be issued, a further report be presented to Council following the public exhibition period of the draft Planning Proposal and draft DCP amendments, to provide details of any submissions received throughout that process.
-

Background

In late 2019, GML Heritage Consultants (GML) prepared the *Bayside Heritage Study – Review of Heritage Conservation Areas*, which recommended the following HCAs:

- Brighton Parade, Brighton Le Sands
- Hamilton and Lansdowne Street, Bardwell Valley
- Gibbs and Farr Streets, Banksia
- Ocean View Estate, Bexley
- Aloha and Forster Streets, Mascot
- Moorefield Estate, Kogarah.

These findings were presented at a General Manager’s briefing on 2 October 2019 and subsequently placed on exhibition on 9 October 2019. Approximately 580 letters were sent to all landowners within the six proposed areas. A total of 220 submissions were received and 66 telephone enquiries were answered.

The outcome of this consultation was reported to Council on 11 November 2020 (**Attachment 1**). Council resolved to proceed with the HCAs proposed in Banksia, Bardwell Valley, Brighton Le Sands, and Oceanview Estate, Bexley, following minor amendments to their borders, based on community feedback. Council also resolved not to proceed with the proposed HCAs of Aloha and Forster Streets, Mascot and Moorefield Estate, Kogarah (**Attachment 2**).

The 2019 GML report, Council resolutions, and draft PP, were considered by the Bayside Local Planning Panel (BLPP) on 22 March 2022 (**Attachment 3**). The BLPP noted a lack of further heritage advice to justify the exclusion of properties from the proposed HCAs, and therefore recommended that Council request robust and detailed heritage advice and justification for any property’s exclusion before deciding the extents of the final HCAs (see **Attachment 4**).

The BLPP supported the progression of all six HCAs recommended by GML Heritage Consultants to a Gateway determination, unless Council had the benefit of heritage advice that justified the removal of any of the recommended HCAs.

Based on recommendations from the BLPP, Bayside Council commissioned Niche Environment and Heritage (Niche) to conduct an Independent Desktop Review of the original 2019 report, its findings, and associated materials. In late 2022, Niche submitted to Council the *Planning Proposal Review – Bayside Council: Proposed Heritage Conservation Areas* (**Attachment 5**).

Based on the results of the desktop review by the independent Heritage Consultant (Niche), this draft PP proposes to proceed with the creation of four HCAs under the *Bayside Local Environmental Plan 2021* (BLEP 2021), being:

- Brighton Parade, Brighton Le Sands
- Hamilton and Lansdowne Street, Bardwell Valley
- Gibbs and Farr Streets, Banksia
- Ocean View Estate, Bexley.

The independent Heritage Consultant’s desktop review justifies the resolution by Council to not proceed with the proposed HCAs of Aloha and Forster Streets, Mascot and Moorefield Estate, Kogarah.

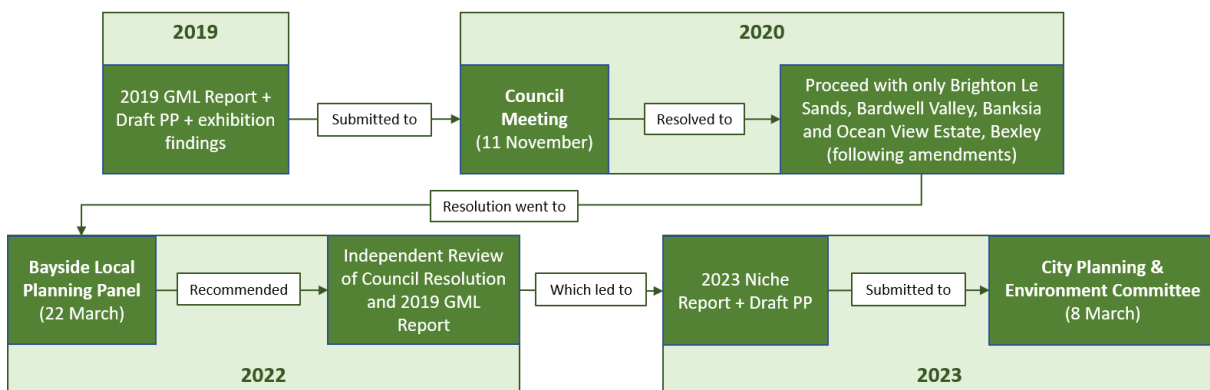
The methodology used to inform site selection, includes:

- A review of previous heritage studies and existing heritage listings
- The collation of background historical information and documentation, including early maps and subdivision plans
- Fieldwork involving inspections of built form, landscape, public domain and streetscapes within the boundaries of the HCAs
- The identification and assessment of the heritage significance of the areas
- The provision of a brief character statement for each potential new HCA
- Preliminary analysis of each building’s contribution to the significance for each potential new HCA.

The recommendation of adjustments to boundaries were considered necessary to ensure cohesiveness in HCAs.

This draft PP is to be accompanied by proposed draft DCP controls, included later in this report. These controls consist of site-specific objectives and controls to inform development proposed within each of the HCAs and would be in addition to the general DCP provisions and controls for existing HCAs included in the recently exhibited draft Bayside DCP 2022.

The flowchart below provides a visual representation of the history of the various reporting steps that have led to the subject report for the Committee’s consideration:



Draft Planning Proposal

Properties subject to the draft PP are broadly outlined in **Figure 1** below, while individual property descriptions are provided later in this report.

Reference should be made to **Attachment 3** for background information, draft statements of significance and other detailed material for the four proposed HCAs, as well as the two originally proposed HCAs from the 2019 report.

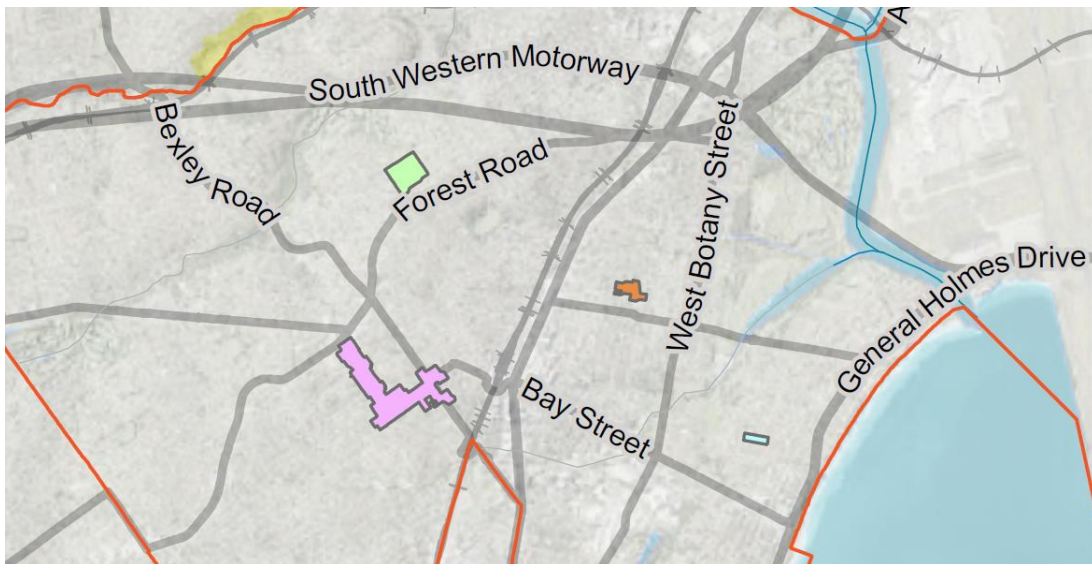


Figure 1: A contextual map outlining the locations of the proposed HCAs. (Bardwell Valley - green; Banksia - orange; Brighton Le Sands - blue; and Ocean View Estate, Bexley - purple)

Further detail on the properties proposed to be included in each HCA and proposed DCP provisions are provided in the following sections of this report.

Should this draft PP be adopted by Council, the following amendments will be inserted into *Part 2 Heritage Conservation Areas of Schedule 5 Environmental Heritage* in the BLEP 2021:

Name of heritage conservation area	Identification on heritage map	Significance
Banksia Heritage Conservation Area	Shown by a red outline with red hatching and labelled "C3"	Local
Bardwell Valley Heritage Conservation Area	Shown by a red outline with red hatching and labelled "C4"	Local
Brighton Le Sands Heritage Conservation Area	Shown by a red outline with red hatching and labelled "C5"	Local
Ocean View Estate Heritage Conservation Area	Shown by a red outline with red hatching and labelled "C6"	Local

Brighton Le Sands HCA

The proposed Brighton Le Sands HCA incorporates the following properties:

**Brighton Le Sands
Heritage Conservation
Area**

Brighton Parade: 1-35

The following boundary will apply to BLEP 2021 Heritage Map 005:



Should the proposed Brighton Le Sands HCA be adopted by Council and incorporated into BLEP 2021, the following site specific DCP controls are proposed:

Objective	Control
Brighton Le Sands Heritage Conservation Area	
O1. Retain and conserve the special qualities of the Brighton Le Sands HCA and ensure that development within the HCA is commensurate with the heritage significance of the area.	C1. Contributory and neutral dwellings are to be retained and conserved.
	C2. Existing verandas and porches shall not be infilled.
	C3. Roof forms are to be hipped and gabled.
	C4. The single storey character of the area is to be retained.
	C5. Significant public domain elements including street plantings and brick kerbing shall be retained and conserved.
	C6. Additional driveway crossovers are not permitted where historical brick kerbing would be disturbed.
	C7. Additions and new buildings shall incorporate materials and finishes consistent with adjacent and nearby contributory dwellings, e.g., smooth face brickwork, roof

		tiles, timber windows and doors, roughcast rendered detailing
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Independent Heritage Consultant's Comments

In their review of the Original Brighton Le Sands HCA Proposal, the independent Heritage consultant concluded:

- That the 2019 recommendation to list this HCA remains justified
- That the items and uncharacteristic structures that are located on the eastern end of Brighton Street are necessary to the overall integrity of the HCA
- That the decision to amend the boundary in the draft PP from what was recommended in 2019 is not warranted.

Bardwell Valley HCA

The proposed Bardwell Valley HCA incorporates the following properties:

Bardwell Valley Heritage Conservation Area	Lansdowne Street: 1-25 and 2-28
	Hamilton Street: 1-27 and 2-30

Should the proposed Bardwell Valley HCA be adopted by Council and incorporated into the BLEP 2021, the following boundary will apply to BLEP 2021 Heritage Maps 001 and 002:



Should the proposed Bardwell Valley HCA be adopted by Council and incorporated into BLEP 2021, the following site specific DCP controls are proposed:

Objective		Control	
Bardwell Valley Heritage Conservation Area			
O1.	Retain and conserve the special qualities of the Lansdowne and Hamilton Streets HCA and ensure that development within the HCA is commensurate with the heritage significance of the area.	C1.	Contributory and neutral dwellings are to be retained and conserved.
		C2.	Existing verandas and porches shall not be infilled.
		C3.	Roof forms are to be hipped and gabled.
		C4.	The single storey character of the area is to be retained.
		C5.	Significant public domain elements including street plantings shall be retained and conserved.
		C6.	Single storey hipped roof additions are preferred. Additions above roof lines shall be set back from the street elevation to minimise change as seen from the street.
		C7.	Additions and new buildings shall incorporate materials and finishes consistent with adjacent and nearby contributory dwellings, e.g., smooth face brickwork, terracotta roof tiles, timber windows and doors, sandstone base courses.

Independent Heritage Consultant's Comments

In their review of the Original Bardwell Valley HCA Proposal, the independent heritage consultant concluded:

- That the 2019 recommendation to list this HCA remains justified
- That the community is generally supportive of this HCA
- That ongoing development currently poses an issue for the area without appropriate planning controls in place
- That the decision to proceed with this area in the draft PP is warranted.

Banksia HCA

The proposed Banksia HCA incorporates the following properties:

Banksia Heritage Conservation Area	Gibbes Street: 4-26 and 5-25
	Farr Street: 1-39 and 18-28

BLEP 2021 Heritage Map

Should the proposed Banksia HCA be adopted by Council and incorporated into the BLEP 2021, the following boundary will apply to BLEP 2021 Heritage Map 005:



Should the proposed Banksia HCA be adopted by Council and incorporated into BLEP 2021, the following site specific DCP controls are proposed:

Objective		Control	
Banksia Heritage Conservation Area			
O1.	Retain and conserve the special qualities of the Banksia HCA and ensure that development within the HCA is commensurate with the heritage significance of the area.	C1.	Contributory and neutral dwellings are to be retained and conserved.
		C2.	Existing Porches shall not be infilled.
		C3.	Original roof forms are to be retained. Dormer windows, skylights and other infrastructure are not permitted on the street-facing roof plane.
		C4.	The single storey character of the area is to be retained
		C5.	Single storey additions are preferred. Additions to terraced cottages shall be located at the rear or incorporated into the roof space.
		C6.	Additions and new buildings shall incorporate materials and finishes consistent with adjacent and nearby contributory dwellings.
		C7.	Additional vehicle crossovers are not supported.

Independent Heritage Consultant’s Comments

In their review of the Original Banksia HCA Proposal, the independent Heritage Consultant concluded:

- That the 2019 recommendation to list this HCA remains justified
- That the community feedback provided valuable assistance in understanding of this HCA

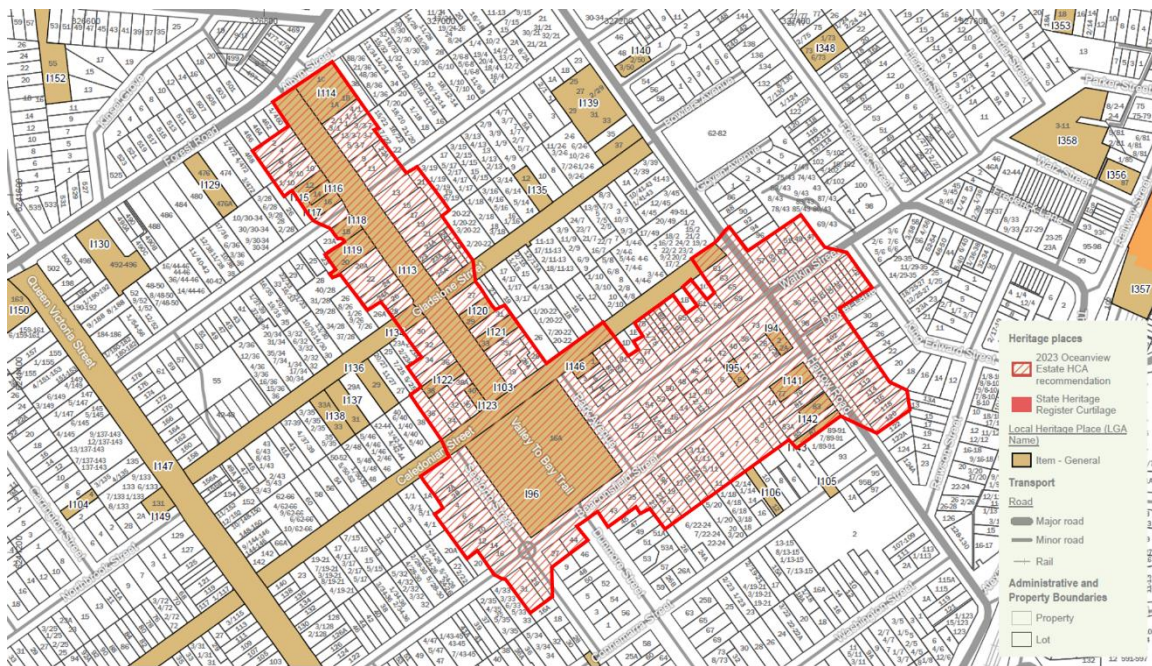
- That the decision to amend the boundary in the draft PP from what was recommended in 2019 was mostly warranted, except for the exclusion of No. 21 Gibbes Street.

Ocean View Estate, Bexley HCA

The proposed Ocean View Estate, Bexley HCA incorporates the following properties:

Ocean View Estate Heritage Conservation Area	Beaconsfield Street: 1-31 and 2-18
	Caledonian Street: 1A and 28-36
	Dunmore Street North: 1-39 and 2-40
	Dunmore Street South: 43 and 44
	Forest Road: 460
	Gladstone Street: 24 and 24A
	Harrow Road: 61-69, 77-87 and 98-120
	Monomeeth Street: 22A
	Park Avenue: 1-19
	Seaforth Street: 2-16A and 9
	Watkin Street, Bexley: 38-54 and 59-85
	Watkin Street, Rockdale: 22-36 and 47-57

Should the proposed Ocean View Estate HCA be adopted by Council and incorporated into the BLEP 2021, the following boundary will apply to BLEP 2021 Heritage Maps 002 and 005:



Should the proposed Ocean View Estate, Bexley HCA be adopted by Council and incorporated into BLEP 2021, the following site specific DCP controls are proposed:

Objective		Control	
Ocean View Estate Heritage Conservation Area			
O1.	Retain and conserve the special qualities of the Oceanview Estate HCA and ensure that development within the HCA is commensurate with the heritage significance of the area.	C1.	Contributory and neutral dwellings are to be retained and conserved.
		C2.	Existing verandahs and porches shall not be infilled.
		C3.	Roof forms are to be hipped and gabled.
		C4.	The single storey character of the area is to be retained.
		C5.	Significant public domain elements including public open space and street plantings shall be retained and conserved. Seaforth Park is to be retained as public open space.
		C6.	Single storey hipped roof additions are preferred. Additions above roof lines shall be set back from the street elevation to minimise change as seen from the street.
		C7.	Additions and new buildings shall incorporate materials and finishes consistent with adjacent and nearby contributory dwellings. For example, smooth face brickwork, terracotta or slate roof tiles, timber windows and doors, sandstone base courses.
		C8.	Buildings on street corners shall address both street frontages through façade articulation, wraparound porches, corner gates and consistent fences. Fences up to 2 metres in height on the secondary street frontage of corner lots may be considered for privacy, if set well back from the corner.

Independent Heritage Consultant's Comments

In their review of the Original Ocean View Estate HCA Proposal, the independent Heritage Consultant concluded:

- That the 2019 recommendation to list this HCA remains justified
- That the community feedback is biased from an individual viewpoint, which does not properly consider the overall effect of excluding too many individual structures
- That the decision to amend the boundary in the draft Planning Proposal from what was recommended in 2019 was not warranted across the majority of the HCA, with the exception of some properties which are not located on streetscapes which are significant to the HCA.

Aloha and Forster Streets, Mascot HCA and Moorefield Estate, Kogarah HCA

In the 11 November 2020 Meeting, Council resolved to not proceed with the potential Mascot and Moorefield Estate, Kogarah HCAs as recommended within the draft PP and 2019 GML, report due to Community Feedback during the exhibition period.

When reported to it, the BLPP advised that the Council did not have the benefit of an additional professional recommendation to exclude these potential sites from this draft PP.

The BLPP recommended that Council acquire an independent desktop review of the 2019 GML report, the draft PP as reported to the BLPP, and associated documents, in order to justify excluding any properties from the potential HCAs.

The findings of the independent desktop review prepared by the independent Heritage Consultant (Niche) are summarised below.

Aloha and Forster Streets, Mascot HCA

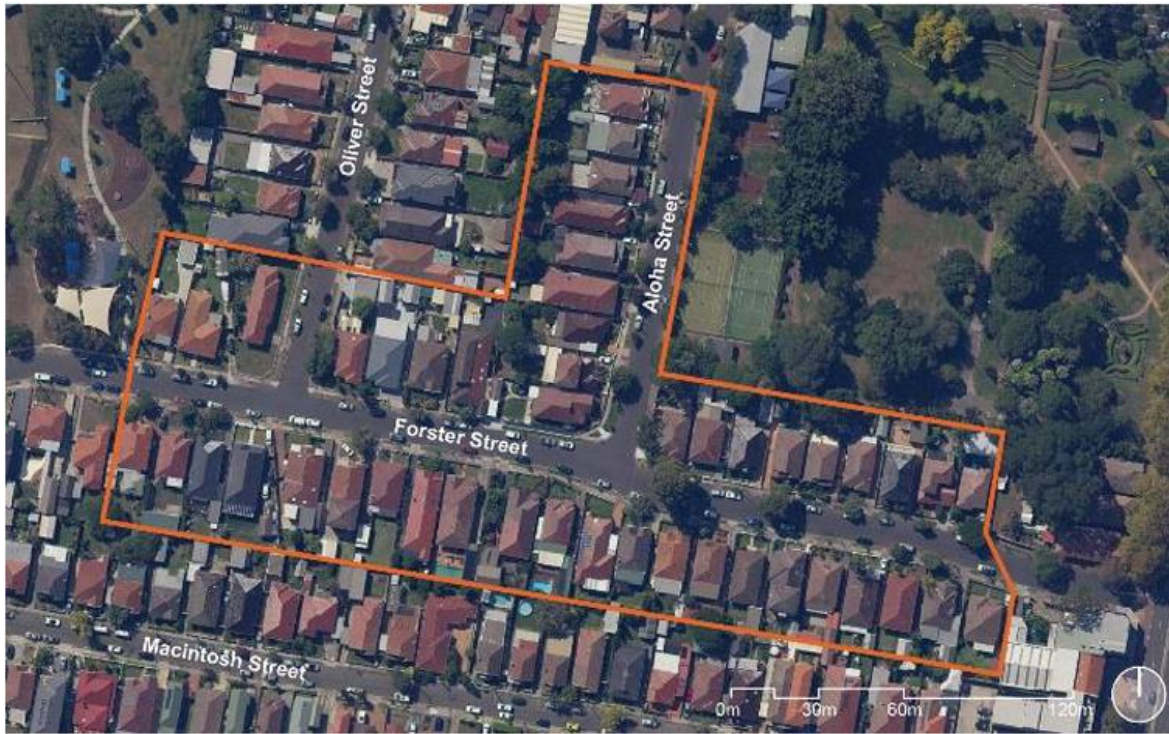


Figure 2: Location of the Aloha and Forster Streets, Mascot HCA original proposed boundary (Source: Six Maps with GML 2019 report overlay).

In their review of the original Mascot HCA proposal, the independent Heritage Consultant concluded:

- That the 2019 recommendation to list this HCA is not supported by assessed heritage value or significance
- That there is a lack of cultural significance in this area
- That ongoing development has further weakened this area's integrity
- That the decision not to proceed with this area as a HCA is warranted.

Moorefields Estate, Kogarah HCA

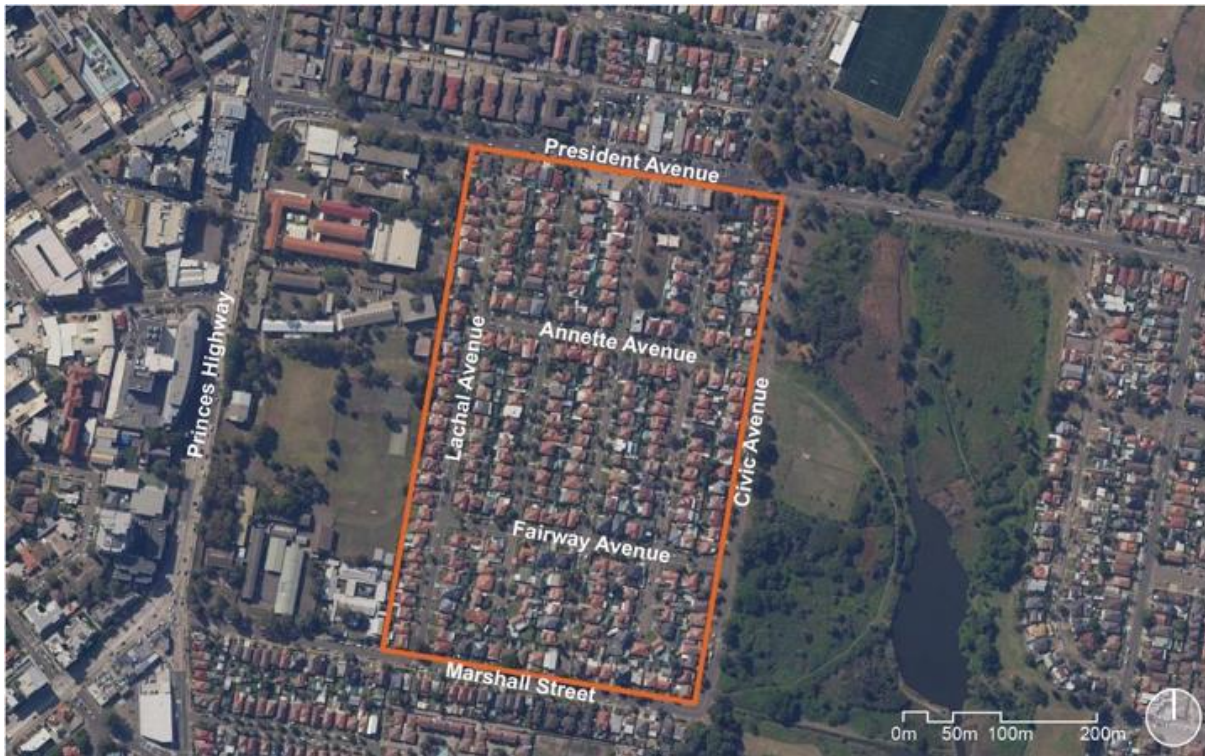


Figure 3: Location of the Moorefields Estate, Kogarah HCA original boundary
(Source: Six Maps with GML 2019 report overlay).

In their review of the original Moorefield Estate HCA, the independent Heritage Consultant concluded:

- That the 2019 recommendation to list the HCA was only partially justified, and the area has some issues related to the overall integrity and significance
- That the local community has doubts about the significance and practicality about the proposed HCA
- That the decision not to proceed with this area as a HCA is warranted.

Financial Implications

Not applicable



Community Engagement

If the draft Planning Proposal is submitted to DPE for a Gateway Determination, the requirements for community consultation (including duration) will be outlined by DPE in the Gateway Determination. Following exhibition, a further post-exhibition report will be prepared for the City Planning and Environment Committee, which will include the details of any submissions, and how they have been addressed.

Attachments

- 1 Council Meeting Agenda 11 November 2020 (Under separate cover Attachments Part One) [⇒](#)
- 2 Council Meeting Minutes 11 November 2020 (Under separate cover Attachments Part One) [⇒](#)
- 3 Bayside Local Planning Panel Meeting Report & Attachments 22 March 2022 (Under separate cover Attachments Part One) [⇒](#)
- 4 Bayside Local Planning Panel Meeting Minutes 22 March 2022 (Under separate cover Attachments Part One) [⇒](#)
- 5 Independent Heritage Consultant Desktop Review (Under separate cover Attachments Part One) [⇒](#)

City Planning & Environment Committee

8/03/2023

Item No	CPE23.007
Subject	Bayside Local Housing Strategy Implementation & Delivery Plan
Report by	Peter Barber, Director City Futures
File	SF18/375

Summary

The purpose of this report is to seek endorsement for the draft Local Housing Strategy (LHS) Implementation and Delivery Plan (refer **Attachment 1**) to be submitted to the Department of Planning and Environment (DPE).

Under the terms of the DPE's approval of Bayside's LHS, Council is required to prepare a Bayside Local Housing Strategy Implementation and Delivery Plan (IDP), which considers the delivery mechanisms of the LHS, timeframes, interdependencies with other work, risks, and mitigation measures. The IDP is essentially a working spreadsheet that captures and prioritises tasks so they can be tracked.

The DPE has developed the Implementation and Delivery Plan Guideline, and a template to assist Councils in completing the IDP. The DPE requires Council to submit the IDP so that the information contained within it can be used by the DPE and other stakeholders to monitor progress against agreed housing targets and forecasts. It is expected that Council should evaluate and update the IDP each time the LHS is updated or sooner if required.

An update on Council's Local Housing Strategy was provided to the City Planning and Environment Committee on 12 October 2022 where it resolved to endorse commencement of project planning and masterplanning for three investigation areas in the following order: West Kogarah, Botany Road south of Gardeners Road, and Bexley North. The Committee's recommendations were considered at the Council meeting on 26 October 2022, where Council resolved to adopt the committee's recommendations.

Officer Recommendation

That Council endorses the draft Bayside Local Housing Strategy Implementation and Delivery Plan for submission to DPE.

Background

The NSW State Government requires that all Councils prepare a LHS. The purpose of the LHS is to provide clarity on Council's vision for housing for the information of the community,

the development industry, and the NSW Government. Local Housing Strategies are to be approved by the DPE.

The Bayside LHS was adopted by Council in March 2021 and then approved by DPE with conditions on 30 June 2021.

A condition of DPE's approval requires an updated Implementation and Delivery Plan (IDP) to be prepared, which clearly articulates the actions, yields, roles, responsibilities, and timing to facilitate housing supply, diversity, and affordability between 2021-2036 and beyond.

The IDP is a comprehensive document that maps out all strategic projects required to satisfy the LHS and provides a commitment to Council delivering additional housing to meet the Greater Cities Commission's housing targets. The IDP is essentially a working spreadsheet that captures and prioritises tasks so they can be tracked. The attached draft IDP responds to the condition of DPE's LHS approval and has been prepared in accordance with DPE's Implementation and Delivery Plan Guidelines.

An update on the Bayside LHS was considered by the City Planning and Environment Committee (CP&E) meeting on 12 October 2022. The report makes recommendations for three areas proposed for investigation, which included:

- West Kogarah
- Botany Road
- Bexley North

The Committee's recommendation in relation to this matter was:

1. *That Council endorses commencement of project planning and masterplanning for three investigation areas in the following order: West Kogarah, Botany Road south of Gardeners Road, and Bexley North.*
2. *That Council requests a subsequent report that provides more detailed information about project scope, timeframes, and milestones for each of the Investigation Areas.*

The Committee's recommendations were considered at the Council meeting on 26 October 2022, where Council resolved to adopt the above recommendations.

Project planning is currently being prepared to inform a future report to Council, which will respond to item 2 of the resolution above.

Council will be updated on a regular basis as projects progress and milestones are met throughout the execution of the deliverables of the IDP.

Financial Implications

- Not applicable
- Included in existing approved budget
- Additional funds required
-

Community Engagement

Council undertook extensive community engagement during the preparation of its Local Strategic Planning Statement and LHS. There is no requirement for the IDP to be exhibited, as it is intended for Council's internal use as a road map to deliver what has already been canvassed with the community, and for DPE to monitor Council's LHS implementation progress.

Attachments

Bayside LHS Implementation and Delivery Plan [↓](#)

Bayside LHS Implementation and Delivery Plan

Project name or action	Project details			Project plan	Dwelling yield		Current status, start and end dates	Key milestones	Stakeholder engagement dates	Key risks	Funding
	Project type	Description	Statutory mechanism / implementation method		est. 6-10 yr	est. 10+yr					
1. Plan for housing supply and delivery											
1.01. Plan for housing targets of 10,150 additional dwellings between 2016 and 2021, 7720 additional dwellings between 2021 and 2026 and 8,151 additional dwellings between 2021 and 2026.	Strategy	Bayside Council's housing targets have been provided to align with the LHS. These targets ensure that sufficient capacity is provided to meet expected demand between 2016 and 2026.	Strategy, Urban Design, Masterplan, PP, DCP	No	N/A	N/A	N/A	N/A	N/A	N/A	
1.02. Review development capacity and take up rates every five years to ensure sufficient capacity remains	Review	Development capacity reviewed 2021. To be revisited in 2026.	Internal Review	No	N/A	N/A	1/06/2021 1/06/2026	2021 review completed	N/A	N/A	
2. Plan for location of new housing											
2.1 Investigate and plan for Arncliffe	Planning control amendments	Draft PP/DCP amndt. In 2021 Council resolved to establish a Reference Group to consider the proposed changes to LEP and DCP controls. Council is currently preparing a governance framework to support the further consideration of this matter.	Urban Design study/Draft PP/DCP controls	Yes		550	1/06/2019 1/06/2024	Draft PP Council June 2021	Council resolved to establish a Precinct Committee to consider the draft PP in new term of Council. CPE Committee to be briefed Q1 2023.	Risk 1: Local community and political objection to proposed land use and development control changes Mitigation: Early consultation with key community groups and stakeholders via establishment of Precinct Committee Risk 2: Delays to or issues raised in responses from agencies Mitigation: Early consultation with likely key agency stakeholders (partly undertaken via initial Draft PP under Public Spaces Legacy Program)	Part Council, Part DPE
2.1 Investigate and plan for Banksia	Investigation	Preliminary masterplanning to identify building bulk scale, open space opportunities, dwelling yield, amenity impacts	TBC	No		0	1/10/2019 1/01/2020	Completed	N/A Preliminary review (in response to adopted Bayside Housing Strategy Item 2.1) of potential dwelling yield, urban form and open space needs indicated that Banksia was not suitable at the time of review for changes to planning controls. No community engagement was undertaken.	Risk 1: Unmet landowner expectations for growth in this precinct Mitigation: Report to Council on Implementation Plan will publicise status of investigations. LSPS and LHS made clear scope of project was purely investigatory, while Bayside West 2035 Plan does not provide any impetus for further growth in Banksia outside Planned Precinct. Can be communicated in response to any landowner inquiries	Part Council, Part DPE
2.1 Investigate and plan for Rockdale Town Centre	Planning control amendments	LEP/DCP Amendments for Rockdale Town Centre and Walz Street Precinct	LEP Amendments (Draft PP) with accompanying Urban Design studies and DCP amendments	Yes		1839	1/06/2019 1/12/2022	Notification of LEP amendment occurred on 16 December 2022	Completed	Risk 1: Local community and political objection ('development fatigue' to further changes in town centre) Mitigation: Early consultation with key community groups and stakeholders Risk 2: Delays to or issues raised in responses from agencies Mitigation: Early consultation with likely key agency stakeholders (partly undertaken via initial Draft PP under Public Spaces Legacy Program) Risk 3: Confusion over level of growth, timing of delivery Mitigation: Clear definition of project scope, early and regular reporting to Council on milestones Risk 4: Complaints about outcomes unfairly favouring Council-owned land (Rockdale Spine) Mitigation: Governance and probity measures clearly outlined at project inception	Part Council, Part DPE
2.1 Investigate and plan for (West) Kogarah	Investigation	Preliminary masterplanning to identify building bulk scale, open space opportunities, dwelling yield, amenity impacts	Masterplan/Urban Design study/Draft PP/DCP controls	To be commenced in Q1 2023	TBA	TBA	26/10/2022	TBA	Council considered a report in October 2022 and resolved to commence project planning and masterplanning for West Kogarah. More detailed information about project scope, timeframes and milestones to be provided in Q1 2023.	Risk 1: Local community and political objection to proposed land use and development control changes Mitigation: Identify key community groups and stakeholders at a preliminary stage and undertake early consultations Risk 2: Delays to or issues raised in responses from agencies Mitigation: Identify likely key agencies at a preliminary stage and undertake early consultations Risk 3: Confusion over level of growth, timing of delivery Mitigation: Early consultations should clearly establish parameters for investigation to manage expectations	Council

Bayside LHS Implementation and Delivery Plan

Project name or action	Project details			Project plan	Dwelling yield		Current status, start and end dates	Key milestones	Stakeholder engagement dates	Key risks	Funding
	Project type	Description	Statutory mechanism / implementation method		est. 6-10 yr	est. 10+yr					
Bayside Local Housing Strategy action										Risk mitigation measures	Source of funding
2.1 Investigate and plan for Carlton	Investigation	Preliminary masterplanning to identify building bulk scale, open space opportunities, dwelling yield, amenity impacts	Not proceeded with. Preliminary review (in response to adopted Bayside Housing Strategy Item 2.1) of potential dwelling yield, urban form and open space needs indicated that Carlton was not suitable at the time of review for changes to planning controls.	No	0	0	N/A	N/A	N/A	Risk 1: Unmet landowner expectations for growth in this precinct Mitigation: Report to Council on Implementation Plan will publicise status of investigations. LSPS and LHS made clear scope of project was purely investigatory. Can be communicated in response to any landowner inquiries	Council
2.1 Investigate and plan for Bexley North	Investigation	Preliminary masterplanning to identify building bulk scale, open space opportunities, dwelling yield, amenity impacts	Masterplan/Urban Design study/Draft PP/DCP controls	To be commenced in Q1 2023	TBA	TBA	26/10/2022	TBA	Council considered a report in October 2022 and resolved to commence project planning and masterplanning for Bexley North. More detailed information about project scope, timeframes and milestones to be provided in Q1 2023.	Risk 1: Local community and political objection to proposed land use and development control changes Mitigation: Identify key community groups and stakeholders at a preliminary stage and undertake early consultations Risk 2: Delays to or issues raised in responses from agencies Mitigation: Identify likely key agencies at a preliminary stage and undertake early consultations Risk 3: Confusion over level of growth, timing of delivery Mitigation: Early consultations should clearly establish parameters for investigation to manage expectations	Council
2.1 Investigate and plan for Brighton Le Sands	Investigation	Council conducted an extensive investigation of a portion of BLS and prepared a number of Masterplan options and feasibility studies. Council has not progressed amendments to the BIEP or DCP, mainly due to the impact of the very substantial uplift required to achieve feasibility and lack of high capacity public transport.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Council
2.1 Investigate and plan for Bardwell Park	Investigation	The Local Housing Strategy notes that the character and topography of this area limits the appropriateness for apartments and larger medium density dwellings. Some infill development could be achieved near the railway station and local centre. Investigation was not recommended at this time.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Council
2.1 Investigate and plan for Eastgardens	Investigation	The Eastern City District Plan requires Bayside and Randwick Councils to collaborate on planning for the MaroubraEastgardens Strategic Centre, the vast majority of which is in the Randwick LGA. As part of those investigations the findings of the Bayside Local Housing Strategy will be considered. Initial discussions with Randwick Council indicate a commencement date for this project of late 2023	N/A	No	N/A	N/A	late 2023	N/A	Engagement with Randwick Council to occur in late 2023.	N/A	Council
3. Plan for diversity of housing types											
3.1 Develop planning controls requiring a % of all new apartments to have three bedrooms	DCP Control	Part 5.1.4 Quality of design and housing choice and diversity of Bayside DCP 2022 includes control for family friendly apartments of 3 or more bedrooms to be located on the lower four floors of the building. Further DCP controls might be needed to encourage the provision of FFA	Bayside DCP	Yes	N/A	N/A	Underway - waiting for DCP to be adopted in Q1 2023.	Public re-exhibition completed 30 January 2023	7 Sep 2022 to 5 October 2022 12 Dec 2022 to 30 Jan 2023	Risk 1 - Controls may not result in a sufficient up-take to meet demand Mitigation 1 - Ensure sufficient analysis is undertaken to ensure controls could deliver FFA to meet demand	Council
3.2 Include in DCP controls for Family Friendly apartment buildings	DCP Control	Part 5.1.4 Quality of design and housing choice and diversity of Bayside DCP 2022 includes control for family friendly apartments of 3 or more bedrooms to be located on the lower four floors of the building. Further DCP controls might be needed to encourage the provision of Family Friendly apartments.	Bayside DCP	Yes	Unknown	Unknown	Underway - waiting for DCP to be adopted in Q1 2023.	Public re-exhibition completed 30 January 2023	7 Sep 2022 to 5 October 2022 12 Dec 2022 to 30 Jan 2023	Risk 1 - Controls may not result in a sufficient up-take to meet demand Mitigation 1 - Ensure sufficient analysis is undertaken to ensure controls could deliver FFA to meet demand	Council

Bayside LHS Implementation and Delivery Plan

Project name or action	Project details			Project plan	Dwelling yield		Current status, start and end dates	Key milestones	Stakeholder engagement dates	Key risks	Funding
	Project type	Description	Statutory mechanism / implementation method		est. 6-10 yr	est. 10+yr					
Bayside Local Housing Strategy action											
3.3 Develop planning controls requiring a % of all new apartments to be studios in selected precincts close to train stations	DCP Control	Part 5.2.4.2 Built form controls of Bayside DCP encourage ground floor dwellings to be designed similar to two storey terraces framed by fin walls	Bayside DCP	Yes	N/A	N/A	Underway - waiting for DCP to be adopted in Q1 2023.	Public re-exhibition completed 30 January 2023	7 Sep 2022 to 5 October 2022 12 Dec 2022 to 30 Jan 2023	Risk 1 - May result in an inappropriate dwelling mix for certain areas Mitigation 1 - Robust analysis of which precinct this control would be appropriate for	Council
3.4 Develop planning controls requiring delivery of ground floor terraced dwellings in apartment buildings where retail premises do not need to be delivered	DCP Control	Part 5.2.4.2 (C3) Built form controls of Bayside DCP encourage ground floor dwellings to be designed similar to two storey terraces framed by fin walls to delineate individual dwellings.	Bayside DCP	Yes	N/A	N/A	Underway - waiting for DCP to be adopted in Q1 2023.	Public re-exhibition completed 30 January 2023	7 Sep 2022 to 5 October 2022 12 Dec 2022 to 30 Jan 2023	Risk 1 - DCP control seeks to 'encourage' and is non-binding Mitigation 1 - Use examples of successful precedents to demonstrate desirability to achieve compliance	Council
3.5 Investigate the need for planning controls that require a percentage of all new dwellings in larger multi-dwelling housing and attached dwelling developments to be single storey and adaptable	DCP Control	Discussion paper	Draft PP/DCP amdt.	Yes	N/A	N/A	yet to commence	yet to commence	TBD	Risk 1 - May limit densities as building footprint for each dwelling is increased Mitigation 1 - Encourage on larger sites and areas with existing low rise buildings	Council
3.6 Permit dual occupancies throughout the Bayside LGA with minimum site frontage and area provisions set out in the LEP (except in HCA or in potential local character areas	Planning control amendments	Introduces new minimum lot size and lot width controls in the R2 zone, governing construction and subdivision for dual occupancy and semi-detached dwelling developments.	Urban Design study/Draft PP/DCP controls	Yes	TBA	N/A	Underway 1/12/2023	On 28 September 2022, Council resolved to forward this PP to DPE to request a Gateway Determination. Council staff requested Gateway Determination on 15 November 2022	TBD	Risk 1 - Different areas within the Bayside area have varied lot patterns with some areas less suited for smaller lot sizes and narrower lot widths Mitigation 1 - Council resolved to apply two different standards to allow smaller lots in certain areas where appropriate	Council
4. Promote housing affordability											
4.1 Develop an affordable housing strategy that meets the requirement of the Eastern Harbour City District Plan	Strategy/Policy	The Affordable Housing Strategy identifies the demand for more affordable housing in Bayside Council and outlines ways that demand could be met.	Possible LEP clause	Yes	N/A	N/A	Start: March 2021	The Bayside Affordable Housing - Evidence Base Report by SGS was finalised on 16 April 2021. This report will inform both the Affordable Housing Strategy and Affordable Housing Contributions Scheme.	TBA	Risk 1 - Community opposition to the provision of affordable housing Mitigation 1 - Clearly describe what affordable housing is and how it benefits the community Risk 2 - Costs of maintaining an affordable housing property portfolio Mitigation 2 - Ensure longterm maintenance can be appropriately financed	Council
4.2 Develop an affordable housing contributions scheme that sets out how, where and at what rate development contributions can be collected by Council for Affordable housing	Development Contributions fees	The Affordable Housing Strategy outlines the delivery mechanism to obtain more affordable housing	Development Contributions plan, Possible LEP clause	Yes	N/A	N/A	Start: March 2021, relies on completion of Affordable Housing Strategy	The Bayside Affordable Housing - Evidence Base Report by SGS was finalised on 16 April 2021. This report will inform both the Affordable Housing Strategy and Affordable Housing Contributions Scheme.	TBA	Risk 1 - Community opposition to the provision of affordable housing Mitigation 1 - Clearly describe what affordable housing is and how it benefits the community Risk 2 - Costs of maintaining an affordable housing property portfolio Mitigation 2 - Ensure longterm maintenance can be appropriately financed	Council
4.3 Develop a VPA policy to facilitate VPAs in instances where an affordable housing contributions scheme does not apply	Policy	Draft Council Planning Agreement Policy prepared and endorsed for public exhibition . This policy establishes Council's policy on the use of planning agreements to ensure it is clear and transparent.	Policy	Yes	N/A	N/A	Expected completion date 22/03/2023	Public exhibition finishes on 7 February 2023. Expected Council meeting date 22 March 2023	10 January to 7 February 2023	Risk 1: Local community and political objection to proposed policy. Mitigation: Early consultation with key community groups and stakeholders.	Council
4.4 Continue to engage with NSW Land and Housing Corporation regarding the retention, upgrade and potential expansion of publicly owned social housing in Bayside	Ongoing consultation	Ongoing consultation with LAHC regarding social housing in Bayside. This would be informed by outputs from the Action 4.1 and 4.2.	DAs/ PPs for redevelopment of LAHC sites	No	N/A	N/A	Ongoing	N/A	TBA		Council
4.5 Investigate potential partnerships with community housing providers to facilitate affordable housing provision	Ongoing consultation	Engage a CHP to manage Bayside's Affordable Housing Portfolio. Council has engaged Echo Realty to manage 44 affordable housing units in the BATA II Eastgardens site	Contracts with CHPs	No	N/A	N/A	Ongoing	N/A	TBA	Mitigation: Early consultation with key community groups and stakeholders via establishment of Precinct Committee	Council
4.6 Protect clusters of walk-up apartments from redevelopment to maintain the existing supply of rental housing that is relatively affordable	Further investigation	Yet to commence.	Possible LEP amendments to limit development potential of these sites	No	N/A	N/A	Ongoing	N/A	TBA	Risk 1 - Does not guarantee this housing typology will remain affordable Mitigation 1 - Other housing affordability measures sought in the above actions should complement the retention of walk-ups to prevent over gentrifications of these developments.	Council
5. Encourage infrastructure delivery through advocacy and partnerships											

Bayside LHS Implementation and Delivery Plan

Project name or action	Project details			Project plan	Dwelling yield		Current status, start and end dates	Key milestones	Stakeholder engagement dates	Key risks	Funding
	Project type	Description	Statutory mechanism / implementation method		est. 6-10 yr	est. 10+yr					
Bayside Local Housing Strategy action											
5.1 Work with NSW Government on improved transport connections to Brighton Le sands and Ramsgate prior to further land use change, including long term mass transit as identified in Future Transport 2056 and more immediate service improvements	Strategy	Draft Strategy. In 2022 Bayside posted their Draft Transport Strategy and Bike Plan - Action Plan 2022 for community feedback, closing for comments on 5 February 2023.	Draft Strategy	No	N/A	N/A	ongoing	TBA	Draft Strategy. In 2022 Bayside posted their Draft Transport Strategy and Bike Plan - Action Plan 2022 for community feedback, closing for comments on 5 February 2023.	N/A	Council
5.2 Work with Greater Sydney Commission and Randwick council on planning for strategic centre of Eastgardens - Maroubra junction, including timing for improved transport accessibility to support current and future development of the strategic centre.	Investigation and Consultation	Yet to commence. GCC currently preparing draft regional plan, expected to be completed by 2023.	Draft Strategy, PP, DCP Amendments	No	N/A	N/A	N/A	N/A	N/A	N/A	Council
5.3 Work with NSW government to understand staging of long-term transport infrastructure investment with the intention of preserving long term development capacity around future mass transit stations between Kingsgrove and Kogarah (including Bexley) until timing for delivery is available	Consultation	Yet to commence.	TBA	TBA	TBA	TBA	TBA	TBA	TBA	TBA	Council
5.4 Liaise with pipeline operators prior to change in land use or density regarding risk management	consultation	Yet to commence.	TBA	TBA	TBA	TBA	TBA	TBA	TBA	TBA	Council
6 Encourage good design and the preservation of local character through planning controls											
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.	Planning control amendments	Introduces new minimum lot size and lot width controls in the R2 zone, governing construction and subdivision for dual occupancy and semi-detached dwelling developments.	Study, PP, LEP and DCP amendments	Yes	TBA	Unknown	Stage: Gateway Determination	28 September 2022 - Council resolved to request a Gateway Determination. 15 November 2022 - Council staff requested Gateway Determination	TBD	Risk 1 - Different areas within the Bayside area have varied lot patterns with some areas less suited for smaller lot sizes and narrower lot widths Mitigation 1 - Council resolved to apply two different standards to allow smaller lots in certain areas where appropriate	Council
6.2 Review principal planning controls using a development feasibility model to ensure Bayside is able to accommodate demand for medium density housing	Planning control amendments	Update planning controls to ensure sufficient take-up of medium density dwelling typologies in the R3 zone. This is captured by PP for R3 Medium Density which seeks to increase the FSR for some R3 zoned land, introduce minimum lot width control and remove need to comply with minimum lot sizes.	Study, PP, LEP and DCP amendments	Yes	Unknown	Unknown	Stage: Pre-gateway	13 December 2022 - Supported by BLPP 8 March 2023 - Prospective Pre-Gateway Committee Meeting 23 March 2023 - Prospective Pre-Gateway Council Meeting	TBD	Risk 1 - Community opposition to increased density in local areas Mitigation 1 - Introduce appropriate controls around lot widths, setbacks, landscaping, and privacy to mitigate potential impacts of increased density	Council
6.3 Revise development contribution plans as part of any proposed precinct level residential rezoning to ensure that social infrastructure provision is aligned with growth	Strategy/Policy	Ensure that new residential precincts have adequate social infrastructure provisioning. This will be informed by both Affordable Housing Development Contributions scheme and Social Infrastructure Strategy once adopted.	Development Contributions Plan		N/A	N/A	Relies on completion of Affordable Housing Strategy, Affordable Housing Development Contributions Scheme and Social Infrastructure Strategy	The Bayside Affordable Housing - Evidence Base Report by SGS was finalised on 16 April 2021. This report will inform both the Affordable Housing Strategy and Affordable Housing Contributions Scheme.	TBD	Risk 1 - Development contributions may be insufficient to meet demand for social infrastructure Mitigation 1- Ensure the Affordable Housing Contributions Scheme is robust enough to meet demand for social infrastructure	Council
6.4 Complete a review of heritage conservation areas where dual occupancy development would be restricted	Study, LEP controls	Introduce 4 new heritage conservation areas in Bardwell Valley, Brighton Le Sands, Bexley, and Banksia. The new conservation areas once enforced will exclude CDCs from being obtained for dual occs. Both existing and new DCPs have robust design controls that prevent dual occs in HCAs where they do not align with the historical character.	Study, PP, LEP amendment, DCP amendment	Yes	N/A	N/A	Stage: Pre-gateway PP began commencement in 2020. Expected to be finalised by late 2023	11 Nov 2020 - Council resolution to proceed with the four HCAs 8 March 2023 - Prospective Pre-Gateway Committee Meeting	9 October to 3 November 2019 - Public exhibition dates	Risk 1 - Dual occupancies not explicitly prohibited Mitigation 1 - Ensure HCA development controls are robust enough to prevent dual occs where they do not align with the historical character.	Council

Bayside LHS Implementation and Delivery Plan

Project name or action	Project details			Project plan	Dwelling yield		Current status, start and end dates	Key milestones	Stakeholder engagement dates	Key risks	Funding
	Project type	Description	Statutory mechanism / implementation method		est. 6-10 yr	est. 10+yr					
Bayside Local Housing Strategy action	Study	<p>Introduce 4 new heritage conservation areas in Bardwell Valley, Brighton Le Sands, Bexley, and Banksia. The new conservation areas once enforced will exclude CDCs from being obtained for dual occs.</p> <p>Both existing and new DCPs have robust design controls that prevent dual occs in HCAs where they do not align with the historical character.</p>	Study, PP, LEP amendment, DCP amendment	Yes	N/A	N/A	PP began commencement in 2020. Expected to be finalised by late 2023	<p>11 Nov 2020 - Council resolution to proceed with the four HCAs</p> <p>8 March 2023 - Prospective Pre-Gateway Committee Meeting</p>	9 October to 3 November 2019 - Public exhibition dates	<p>Risk 1 - Dual occupancies not explicitly prohibited</p> <p>Mitigation 1 - Ensure HCA development controls are robust enough to prevent dual occs where they do not align with the historical character</p>	Council

City Planning & Environment Committee

8/03/2023

Item No	CPE23.008
Subject	Post-Exhibition Report: Re-Exhibition of Draft Bayside Development Control Plan 2022
Report by	Peter Barber, Director City Futures
File	SF23/287

Summary

The purpose of this report is to:

- Provide a summary of responses received during the re-exhibition of the draft Bayside Development Control Plan (DCP) 2022.
- Recommend that Council determine the final parking rates and provisions in relation to carports to be included in the DCP, taking into account submissions received.
- Recommend that Council endorse the adoption of the DCP, subject to certain amendments.

The draft DCP was initially exhibited in September-October 2022. On 23 November 2022, Council considered a post-exhibition report on the draft DCP, resolved to make a number of amendments to the document and re-exhibit the amended draft DCP and supporting documents for a period of 6 weeks (refer to **Attachments 1 to 5** of this report).

In particular, under Chapter 3.5.1, amendments were made to the minimum car parking rates for certain development types, while it was also resolved that controls be amended to allow carports in the front setback area, subject to DA approvals and provided that the structure is sympathetic to the building and streetscape. A further report was put to the 7 December 2022 extraordinary Council meeting detailing proposed wording for the latter amendment, which was endorsed by Council.

The draft DCP and supporting documents were then re-exhibited from 12 December 2022 to 30 January 2023. All public authorities consulted during the initial exhibition were reconsulted, as were all respondents to that exhibition. In accordance with Council's resolution of 23 November 2022, a selection of 20 stakeholders in development and planning sectors were also notified of the draft DCP's re-exhibition.

- Eleven (11) submissions were received from residents, landowners, and internal staff via email and Councils Have Your Say online survey.
- Five (5) submissions were received from public agencies, service providers and infrastructure operators.

Council officer responses to each submission are contained at **Attachment 6**. Several amendments are proposed in response to the submissions received, and these are described in **Attachment 7**. Council officers are satisfied that the proposed amendments very minor in nature and do not warrant re-exhibition.

There was mixed feedback received about the proposed amended parking rates and the report recommendation leaves this element open for Council to finally determine after considering the submissions made.

Officer Recommendation

- 1 That Council notes the submissions (**Attachment 6**) received during the re-exhibition of the draft Bayside Development Control Plan 2022.
 - 2 That Council determines the final parking rates and provisions in relation to the carports to be included in the DCP.
 - 3 That, pursuant to section 3.43 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), and in accordance with section 14 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation), Council adopts the Bayside Development Control Plan 2022 as exhibited (**Attachment 1**), subject to (i) the amendments specified in **Attachment 7**, and (ii) the final parking rates and provisions in relation to carports, as determined by Council.
 - 4 That, in accordance with section 16 of the EP&A Regulation, Council repeals the following Development Control Plans:
 - (i) Botany Bay Development Control Plan 2013; and
 - (ii) Rockdale Development Control Plan 2011.
 - 5 That Council adopts the associated Technical Specifications (2022) (**Attachments 2, 3, 4 and 5**) and repeals existing Technical Specifications (2011), relating to:
 - (i) Traffic, Parking and Access
 - (ii) Stormwater Management
 - (iii) Waste Management
 - (iv) Landscape.
 - 6 That, in accordance with section 14(2) of the EP&A Regulation, Council gives public notice of its decision to adopt the Bayside DCP 2022 and repeal the Botany Bay Development Control Plan 2013 and the Rockdale Development Control Plan 2011, on Council's website, within 28 days of its decision.
 - 7 That, in accordance with section 20(1) of the EP&A Regulation, Council provides a copy of the Bayside Development Control Plan 2022 to the Planning Secretary (NSW Department of Planning and Environment) within 28 days of its decision.
 - 8 That the General Manager be authorised to make further minor modifications, if required, to any administrative (numerical, typographical, interpretation and formatting) errors identified in the finalisation of the Bayside Development Control Plan 2022.
 - 9 That all persons who made a submission in relation to the Bayside Development Control Plan 2022 be advised of Council's resolution.
 - 10 That the adopted Bayside Development Control Plan 2022 come into effect on **10 April 2023** and that the Botany Bay Development Control Plan 2013 and the Rockdale Development Control Plan 2011 be repealed on that date.
-

Background

The draft DCP is a consolidated DCP for the Bayside Local Government Area (LGA). It has been prepared to replace two current DCPs:

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

The draft DCP, along with updated Technical Specifications, was initially exhibited for a period of 28 days from Wednesday 7 September 2022 to Wednesday 5 October 2022, in accordance with the provisions of the EP&A Act and Regulation.

Council considered a post-exhibition report on the draft DCP at its meeting on 23 November 2022 and resolved:

- 1 That Council note the submissions (**Refer Attachment 6 in report**) received during the public exhibition of the draft Bayside Development Control Plan 2022.
- 2 That the Bayside Development Control Plan 2022 as exhibited (**Attachment 1 in report**) be amended to include the amendments in **Attachment 8 in report**, and the following amendment:

Table 3: Car Parking Rates in Part 3.5.5 for the types of residential development noted below be amended from:

Land use	Car Parking Rate
Residential	
<i>Dwelling House / Dual Occupancy / Semi-detached</i>	<ul style="list-style-type: none"> • 1 space per dwelling with 2 bedrooms or less • 2 spaces per dwelling with 3 bedrooms or more
<i>Secondary Dwelling</i>	<i>Nil</i>
<i>Multi Dwelling Housing</i>	<ul style="list-style-type: none"> • 1 space per dwelling with 2 bedrooms or less • 2 spaces per dwelling with 3 bedrooms or more • 1 visitor parking space per 5 dwellings.
<i>Residential Flat Buildings/ Shop-top Housing</i>	<ul style="list-style-type: none"> • 1 space per dwelling with 2 bedrooms or less • 2 spaces per dwelling with 3 bedrooms or more • 1 visitor parking space per 5 dwellings. <p><i>For sites located within 800m of a railway station, the car parking rates are as stipulated in the RTA Guide to Traffic Generating Developments (version 2.2 dated October 2002) section 5.4.3 - Metropolitan Sub-Regional Centres.</i></p>

to be as follows:

Land use	Car Parking Rate
Residential	
<i>Dwelling House / Dual Occupancy / Semi-detached</i>	• 2 spaces per dwelling
<i>Secondary Dwelling</i>	• 1 space per dwelling
<i>Multi Dwelling Housing</i>	<ul style="list-style-type: none"> • 1 space per dwelling with 1 bedroom or less • 2 spaces per dwelling with 2 bedrooms or more • 1 visitor parking space per 5 dwellings.
<i>Residential Flat Buildings/ Shop-top Housing</i>	<ul style="list-style-type: none"> • 1 space per dwelling with 1 bedroom or less • 2 spaces per dwelling with 2 bedrooms or more • 1 visitor parking space per 5 dwellings. <p><i>For sites located within 800m of a railway station, the car parking rates are as stipulated in the RTA Guide to Traffic Generating Developments (version 2.2 dated October 2002) section 5.4.3 - Metropolitan Sub-Regional Centres.</i></p>

In addition, the DCP be amended, subject to appropriate wording by Council staff, to have the effect of allowing carports to be permissible at the front of the building alignment subject to DA approval and provided also that the structure is sympathetic to the building and streetscape.

- 3 *That Draft Bayside Development Control Plan 2022 be re-exhibited for a period of 6 weeks and be reported back to the February 2023 City Planning & Environment Committee and Council for consideration of any additional submissions, and that the updated draft revised DCP is distributed up to 20 stakeholders as nominated by the General Manager or her nominee.*

With regard to part 2 of the resolution, Council staff reviewed the exhibited wording of the control relating to the construction of carports, Control C1 of *Chapter 3.5.1 Design of the Parking Facility*), which previously read:

Off-street parking facilities and carports are not permitted within the front setbacks (driveways/hardstands and turning areas are permitted however, are to be avoided).

An amended control was drafted and endorsed by Council at its Extraordinary Meeting on 7 December 2022. The amended Control C1 of Chapter 3.5.1 is as follows:

“Off-street parking facilities, including carports, are generally not permitted within the front setback due to the impact on streetscape and landscape character. Driveways/hardstands and carports encroaching into the minimum front boundary setback may be considered for single dwelling houses in circumstances where:

- *The hardstand or carport is to serve a single dwelling house (not permitted for any other form of residential development)*
- *There is no opportunity to provide off street parking from a rear lane, side street, or behind the required front setback*

- *The hardstand or carport is for a single vehicle and is no larger than 3m in width, 6m in length and 3m in height if a flat roof, or 3.6m if a pitched roof*
- *The design is sympathetic to the host dwelling and the existing streetscape, in regard to materials, scale, form, roof style and the predominant setbacks of similar structures*
- *The carport does not include enclosing walls, or a solid panel or roller shutter door*
- *Gates do not encroach upon public land during operation and a minimum length of 5.5m is available so that a parked vehicle does not overhang the front boundary*
- *All other requirements of this DCP are met, including landscaping requirements.*

Re-Exhibition of Draft Bayside DCP 2022

The draft Bayside DCP 2022 was re-exhibited for a period of 28 days between 12 December 2022 and 30 January 2023.

The community engagement page, set up on Council's Have Your Say website for the previous exhibition in September-October 2022, was updated to display the amended draft DCP, along with a summary of amendments following the previous exhibition.

Email notifications were sent to all public authorities, service providers and infrastructure operators consulted during the previous exhibition. All respondents to the previous exhibition were also notified by email.

In accordance with Part 3 of Council's resolution of 23 November 2022, a list of stakeholder consultees in development and planning sectors who practice regularly, or have practiced recently, in Bayside LGA, was established. Email notifications were sent out to these stakeholders requesting comment on the amended draft DCP.

There were a total of 527 visits made to the Have Your Say page on the draft DCP. A summary and response to each of the key points in every submission is available at **Attachment 6**, and also identifies where the feedback came from.

Community Submissions

A total of 10 submissions were received from members of the public. The key issues raised related to:

Proposed Parking Rates – General

- Proposal to increase on-site parking rates for residential uses is likely to have the following unintended consequences:
 - Slowed housing delivery due to significantly increased construction costs associated with providing more car parking spaces below ground.
 - Increased traffic on the local roads, which will increase congestion and pollution in the LGA.
 - Discouraging public transport use, walking, and cycling.
- Proposed amendments to increased parking rates are contrary to various objectives of the DCP including:
 - Facilitating and encouraging greater pedestrian, bicycle, and public transport usage to improve local amenity, minimise pollution and the use of non-renewable resources (introduction to draft DCP Section 3.5. Transport, Parking and Access).

- To limit the amount of excavation required for the purpose of car parking so that impacts to groundwater flows are minimised and the amount of landscaped area is maximised (draft DCP Section 3.5.3 On-site Car Parking Rates – Objective 3).
- The proposed amendments are contrary to the Council’s strategic objective to improve housing affordability (Bayside Local Housing Strategy 2020-2036, pg. 6) and the strategic principles of the draft Bayside Transport Strategy which include:
 - Mode shift to sustainable travel.
 - Encourage active transport for short trips.
 - Less need to own or use privately owned vehicles.
- For comparison, the proposed parking rate increase for 2-bedroom dwellings is greater than the rate required in surrounding LGAs which have transport objectives that are similar to Bayside Council. For instance:
 - The Inner West and Georges River Council’s require 1 space per 2-bedroom dwelling.
 - Randwick Council require 1.2 spaces per 2-bedroom dwelling.
 - Sutherland Shire Council requires a minimum of 1.5 spaces and a maximum of 3 spaces per 2-bedroom dwelling.
- Recommend proposed amendments to parking rates as follows:

**Proposed amendments to
Table 3 Car Parking Rates**

Land use

Residential

Dwelling House / Dual
Occupancy / Semi-detached

Minimum Car Parking Rates

- **1 space per dwelling with 2 bedrooms or less.**
- **2 spaces per dwelling with 3 bedrooms or more.**
- ~~2 spaces per dwelling~~

Secondary Dwelling

- 1 space per dwelling

Multi Dwelling Housing

- 1 space per dwelling with ~~4~~ **2 bedrooms or less.**
- 2 spaces per dwelling with ~~2~~ **3 bedrooms or more.**
- 1 visitor parking space per 5 dwellings.

Residential Flat Buildings/ Shop-
top Housing

- 1 space per dwelling with ~~4~~ **2 bedrooms or less.**
- 2 spaces per dwelling with ~~2~~ **3 bedrooms or more.**
- 1 visitor parking space per 5 dwellings.

For sites located within 800m of a railway station, the car parking rates are as stipulated in the RTA Guide to Traffic Generating Developments (version 2.2 dated October 2002) section 5.4.3 - Metropolitan Sub-Regional Centres.

Affordable housing, boarding
houses, group homes, co-living
housing, build-to-rent housing,
and seniors housing

As per requirements stipulated in State Environmental
Planning Policy (Housing) 2021

- The proposed amendments achieve a reasonable compromise between the Councillor's resolution and the original draft DCP requirements. The amendments propose a 'minimum' parking rate. Therefore, the parking rate is not limited and will allow proponents to provide additional parking, above the minimum, to meet demand on a site-by-site basis that takes site specific and locational considerations into account without unnecessarily undermining housing delivery and affordability. It is proposed that applicants that wish to provide parking above the minimum rate are required to provide a traffic and parking impact assessment with their Development Application to support the increase

Miscellaneous Submissions not Related to the Amendments

- (i) Controls for Bexley Town Centre; (ii) additional tree canopy; and (iii) traffic and parking in Arncliffe and Brighton Le Sands.

Submissions by Public Authorities

All public authorities and key agency stakeholders that were consulted on the initial exhibition (over 50 authorities / agency stakeholders) were reconsulted on this re-exhibition.

Submissions were received from:

- Sydney Airport
- NSW Ports
- NSW Environmental Protection Authority
- Port Authority NSW

Feedback and comments received from public authorities and key stakeholder bodies have been addressed in the response to the submissions received (refer **Attachment 6**).

Transport For New South Wales (TfNSW) Submission

A submission from TfNSW (**Attachment 8**) has been received, with the key issues raised including the following:

- TfNSW notes the proposed amendments to on-site car parking rates.
- 2021 Census data indicates the average car ownership for certain suburbs in the Bayside LGA is generally 1 car per dwelling, noting some of these suburbs are close to regular / frequent public transport. The average car ownership of these suburbs is around 1.6 cars per dwelling, with the average of the Bayside LGA being 1.4 cars per dwelling.
- According to 2021 Census Car Ownership Data:
 - Eastgardens: 1.4 cars per dwelling Average
 - Hillsdale: 1.3 cars per dwelling Average
 - Botany: 1.7 cars per dwelling Average
 - Ramsgate: 1.7 cars per dwelling Average
 - Bexley: 1.7 cars per dwelling Average
 - Brighton-le-sands: 1.5 cars per dwelling Average

- Noting the 2021 Census Car Ownership Data for the Bayside LGA, Council is encouraged to consider the car parking rates outlined in the Table of Amendments as maximum parking rates rather than minimum rates. This is in addition to considering a reduction in car parking rates for 2-bedroom dwellings from 2 spaces per dwelling to 1.5 spaces per dwelling. However, for 3 or more bedrooms, TfNSW would support 2 car spaces per dwelling. The provision of 1.5 spaces per dwelling for 2-bedroom dwellings is more generous than TfNSW's car parking rates outlined in the Guide To Traffic Generating Developments, extracted below:

Parking.

The recommended minimum number of off-street resident parking spaces is as follows:

Metropolitan Regional (CBD) Centres:

- 0.4 spaces per 1 bedroom unit.
- 0.7 spaces per 2 bedroom unit.
- 1.20 spaces per 3 bedroom unit.
- 1 space per 7 units (visitor parking).

Metropolitan Sub-Regional Centres:

- 0.6 spaces per 1 bedroom unit.
- 0.9 spaces per 2 bedroom unit.
- 1.40 spaces per 3 bedroom unit.
- 1 space per 5 units (visitor parking).

- Council may like to consider TfNSW's Future Transport Topic Paper on Parking which discusses car parking maximums and the consideration for greater flexibility to parking provision (i.e. those that need it vs those that don't). It also outlines the need for stronger incentives to shifting mode shift to public transport by including Travel Demand Management Measures such as decoupled parking / shared parking in high density residential dwellings which Council is strongly encouraged to include in the draft DCP

Submission from Development Services Team

Consolidated feedback was received from the Development Services Team, who implement Council's planning controls. The observation offered for Council's consideration, based on their practical experience were:

Carports

- Consider allowing carports for semi-detached dwellings, where appropriate.

Proposed Parking Rates for Secondary Dwellings

- Concerned with the parking requirement (1 space) for secondary dwellings for the following reasons:
 - Introducing this requirement will make it very difficult to provide additional accommodation for family members who can share parking with the main dwelling.
 - Three car spaces will be required for a property containing a Dwelling and Secondary Dwelling. These car spaces will not be included as Gross Floor Area

- (GFA) calculation and will make it challenging to accommodate extra space while complying with other controls (e.g., landscaping, private open space, bulk/scale).
- Result in larger outbuildings that may have additional impacts to adjoining properties.
 - Impacts from Secondary Dwellings in rear yard will be further exacerbated.
 - May encourage two storey Secondary Dwellings, which has built form impacts.
 - Potential conversion of garages attached to Secondary Dwellings.
- The provisions for Secondary Dwellings in the Housing SEPP do not require parking to be provided for Secondary Dwellings, so approvals under the SEPP will not have parking.

Proposed Parking Rates: Multi Dwelling Housing, RFBs and Mixed-Use Development

- Increased parking will make it difficult to comply with the control requiring parking to be located beneath the building footprint and will lead to all the sites being covered by basement with little space for planting/deep soil.
- On sloping sites – it will be challenging to accommodate the basement without adverse impacts e.g., raising of private courtyards while minimising overlooking impacts.
- Suggest a single car space be required for 2-bedroom town houses due to the difficulty in retaining deep soil within properties as larger basements are typically built to the boundary and result in poor landscape outcomes and adverse impacts to neighbours.

Post-Exhibition Amendments

In response to the submissions received, and further internal consideration by Council staff, certain post-exhibition amendments are recommended to be made to the re-exhibited version of the draft Bayside DCP 2022.

These amendments concern the following changes to wording, statutory requirements, or technical guidelines, in response to feedback from public agencies and infrastructure operators.

Council officers are satisfied that the proposed post-exhibition amendments are not substantial in nature, and do not warrant re-exhibition of the draft DCP. A summary of the recommended post-exhibition amendments to the draft DCP is included at **Attachment 7**.

Next Steps

Should Council resolve to adopt the draft Bayside DCP 2022, in accordance with the above recommendations, the DCP is intended to come into force on 10 April 2023 (noting Council's adoption date would be 22 March 2023).

A number of steps will be required prior to the DCP coming into force from that date, including:

- The DCP will be revised to incorporate all post-exhibition amendments contained in **Attachment 7**, along with any minor amendments required to correct numerical, typographical, interpretation and formatting errors identified in this final phase;
- Council will give public notice of its decision to approve the DCP and repeal existing DCPs, on Council's website within 28 days of Council's resolution;

- The final adopted DCP, Appendices and Technical Specifications will be provided to the Planning Secretary of the NSW Department of Planning and Environment within 28 days of Council's resolution;
- The final adopted DCP, Appendices and Technical Specifications will be published on Council's website, while repealed DCPs, Appendices and Technical Specifications will be removed or archived; and
- All respondents to the draft DCP exhibition will be notified of Council's resolution.

Financial Implications

- | | |
|--------------------------------------|-------------------------------------|
| Not applicable | <input checked="" type="checkbox"/> |
| Included in existing approved budget | <input type="checkbox"/> |
| Additional funds required | <input type="checkbox"/> |

Community Engagement

As detailed earlier in this report.

Attachments

- 1 Draft Bayside DCP 2022: Re-exhibition Version (Under separate cover Attachments Part One) [⇒](#)
- 2 Exhibited Draft Technical Specification - Traffic, Parking & Access (Under separate cover Attachments Part One) [⇒](#)
- 3 Exhibited Draft Technical Specification - Stormwater Management (Under separate cover Attachments Part One) [⇒](#)
- 4 Exhibited Draft Technical Specification - Waste Management (Under separate cover Attachments Part One) [⇒](#)
- 5 Exhibited Draft Technical Specification - Landscape (Under separate cover Attachments Part One) [⇒](#)
- 6 Response to Submissions (Under separate cover Attachments Part One) [⇒](#)
- 7 Proposed Changes Post-Exhibition (Under separate cover Attachments Part One) [⇒](#)
- 8 TfNSW Submission (Under separate cover Attachments Part One)