
Bayside Planning Panel

27/02/2018

Item No	5.2
Subject	Draft Planning Proposal: 73 & 75 Gardeners Road, Eastlakes
Report by	Howard Taylor, Planner
File	S15/123

Summary

In September 2017 Sydney Water Corporation submitted a draft Planning Proposal to Bayside Council. The draft Planning Proposal requests that Council initiate an amendment to the Botany Bay Local Environmental Plan 2013 in relation to 73 and 75 Gardeners Road, Eastlakes from SP2 Infrastructure (Sydney Water Depot) to *Deferred Matter*, and SP1 Special Activities (Recreation Facility - Outdoor) to R4 High Density Residential. Amendments to development standards relating to building height, floor space ratio and inclusion of an Additional Permitted Use (*Commercial Premises*) under *Schedule 1 Additional Permitted Uses* of the BBLEP 2013 are also sought.

The draft Planning Proposal would enable Sydney Water Corporation, the owner, to divest land that is considered surplus to operational needs, as part of a broader asset management strategy. However, a merit assessment of the draft Planning Proposal, by Council staff, indicates that the proposed amendment to the Botany Bay Local Environmental Plan 2013 does not have strategic merit for the reasons outlined in this report, in particular:

- it is inconsistent with the objectives and detailed requirements of s.117 Directions including 2.3 Heritage Conservation, 3.1 Residential Zones and 4.3 Flood Prone Land;
- there is inadequate justification for the proposed reduction in public land zoned 'SP1 – Special Activities Recreation Facility – Outdoor)
- the proposed change of land use and scale of the proposed development are inconsistent with the desired future character and functioning of the site and its locality, and that inconsistency has not been justified by an adopted Regional, District or Local Strategy.

Council has not received an offer of a Voluntary Planning Agreement. A draft site specific Development Control Plan has not been provided as part of the draft Planning Proposal.

Officer Recommendation

- 1 That the Bayside Planning Panel recommend to Council that the draft Planning Proposal for 73 and 75 Gardeners Road, Eastlakes not be forwarded to the Department of Planning and Environment for a Gateway Determination for the reasons outlined in the report, in particular:
 - (i) it is inconsistent with the objectives and detailed requirements of s.117 Directions including 2.3 Heritage Conservation, 3.1 Residential Zones and 4.3 Flood Prone Land;
 - (ii) there is inadequate justification for the proposed reduction in public land zoned 'SP1 – Special Activities Recreation Facility – Outdoor);
 - (iii) the proposed change of land use and scale of the proposed development are inconsistent with the desired future character and functioning of the site and its

locality, and that inconsistency has not been justified by an adopted or Draft Regional, District or Local Strategy.

Background

Applicant:

Architectus Pty Ltd

Owner:

Sydney Water Corporation

Site description:

The draft Planning Proposal relates to 73-75 Gardeners Road, Eastlakes. Lots subject to the draft Planning Proposal are shown in Table 1, below:

Table 1: Lots subject to the draft Planning Proposal

Lot	DP	Address	Site area (m ²)	Current zoning
101	1232571	73 Gardeners Road, Eastlakes	12870	SP2 Infrastructure (Depot)
51	1216168	75 Gardeners Road, Eastlakes	13495	SP1 Special Activities (Recreation Facility - Outdoor)

The site has a total area of approximately 26,365m² and is bounded by Gardeners Road to the north; Slattery Place to the west; The Lakes Golf Club to the south; and Eastlake Golf Club to the east. (Refer Figure 1) Vehicular access to the site is gained from Gardeners Road, a Classified Road (Main Road).

The eastern portion of the site known as 73 Gardeners Road is currently occupied by an operational Sydney Water Depot and associated outbuildings, a pump house and a detached single storey dwelling house. An open drainage channel running north-south traverses the eastern boundary. The western portion of the site known as 75 Gardeners Road is vacant and has a significant concentration of trees toward its western extent.

A thick, red outline delineates the site in the aerial photograph in Figure 1.



Figure 1 – Aerial Photo of the Subject Site
(Source: Land & Property Information www.maps.six.nsw.gov.au)

Site context:

The site is located at the northern extent of Eastlakes within the Bayside Local Government Area (Bayside LGA), and adjoins the southern extent of the Randwick Local Government Area (Randwick LGA). Eastlakes Shopping Centre is situated approximately 800 metres walking distance west of the site and Kingsford centre in the Randwick LGA is located approximately 800 metres east of the site.

A site context map is provided as Figure 2.

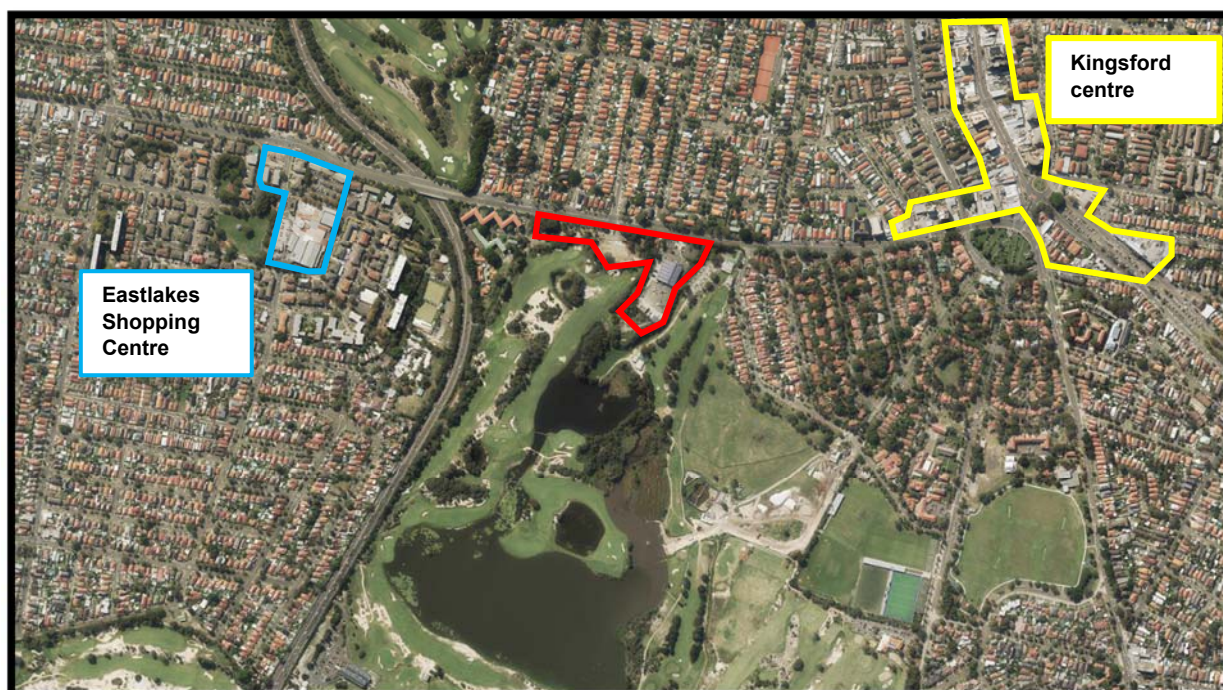


Figure 2: Site Context

(Source: Land & Property Information www.maps.six.nsw.gov.au)

Land use zones surrounding the site comprise predominantly R2 Low Density Residential interspersed with relatively small pockets of R3 Medium Density Residential to the north in the Randwick local government area, R4 High Density Residential to the west, SP1 Special activities (Recreation Facility – Outdoor), commonly known as Eastlakes Golf Club) to the east and Lakes Golf Club to the south. The Lakes Golf Club includes the Botany Water Reserves, an item of State Heritage significance (refer to extract the Botany LEP 2013 Heritage Map in Figure 7). Given the presence of Gardeners Road to the north, which is a hard constraint, the site is enveloped by the Botany Wetlands and land zoned SP1. Refer to figure 3 for the sites broader context.

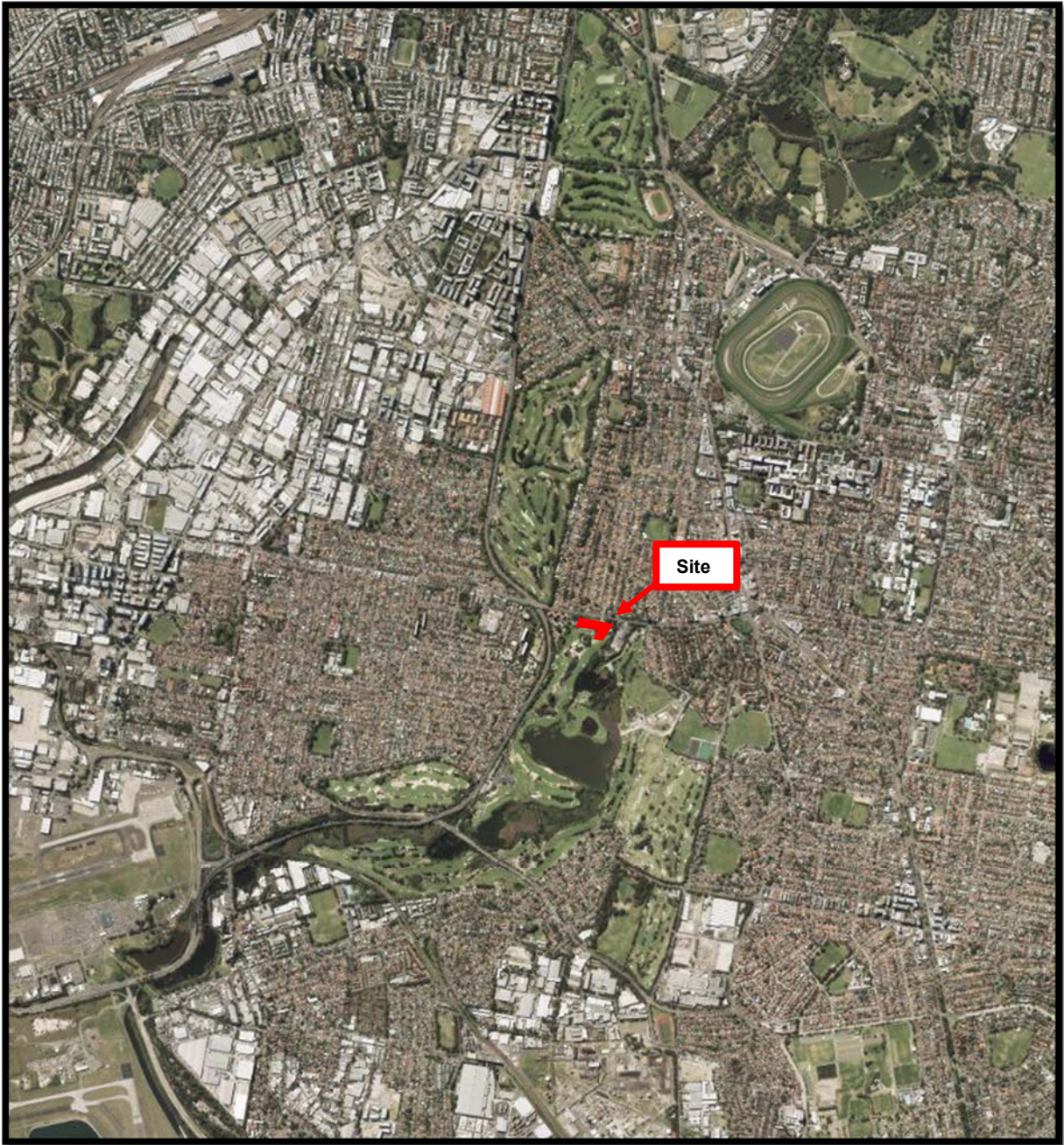


Figure 3: Broader context of the site
(Source: Land & Property Information www.maps.six.nsw.gov.au)

The site is located at the interface of two local government areas –Bayside and Randwick City. Extracts from the Botany Bay LEP 2013 are provided in Figures 4-7, and from the Randwick Local Environmental Plan 2012 (Randwick LEP 2012) in Figures 8-10. The extracts include the site and immediately adjoining land. The subject site is shown in thick blue line outline.

The site is currently zoned SP1 Special Activities (Recreation Facility – Outdoors) and SP2 Infrastructure (Sydney Water Depot).

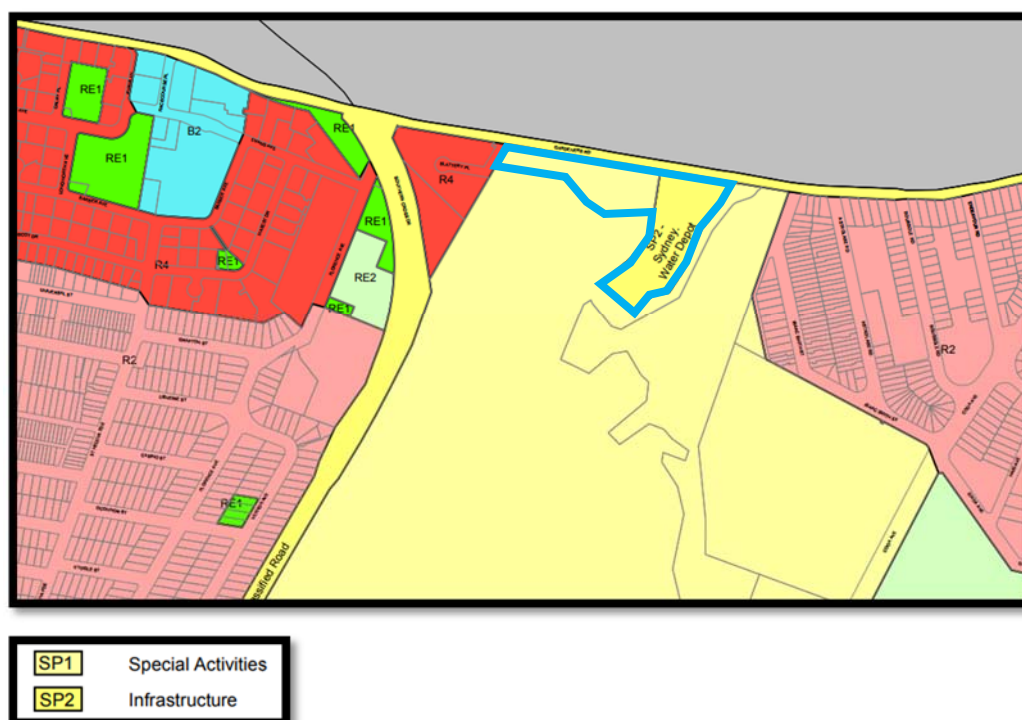


Figure 4 – Botany Bay LEP 2013 Zoning Map LZN_004 – SP1 Special activities (Recreation Facility - Outdoor) and SP2 Infrastructure (Sydney Water Depot)
(Source: www.legislation.nsw.gov.au)

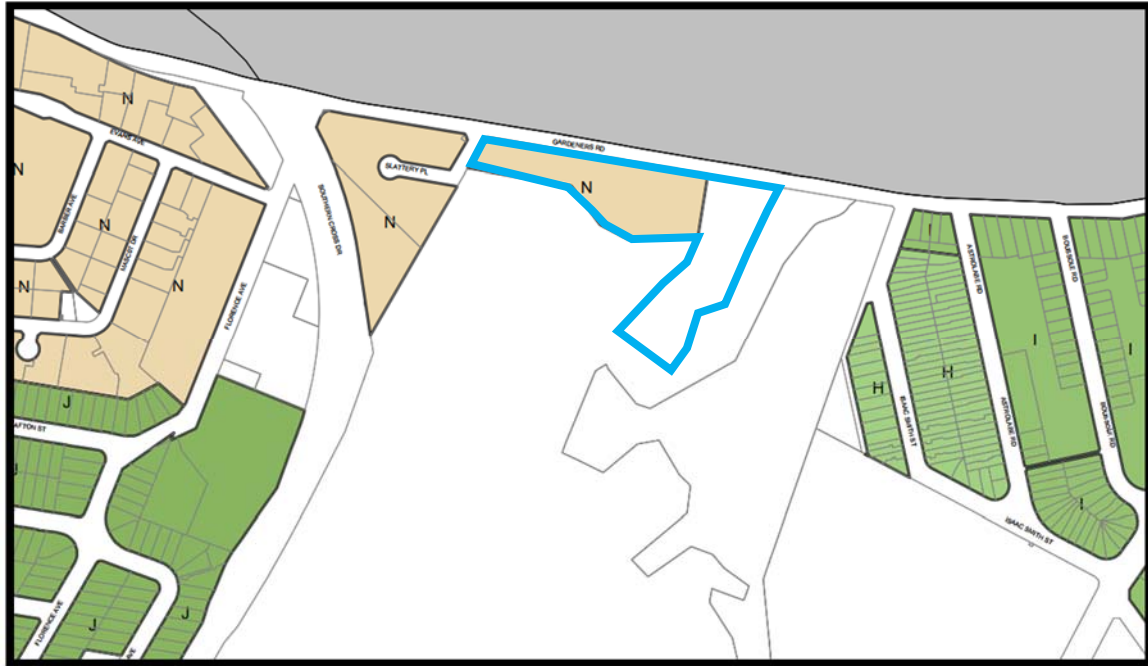


Figure 5 – Botany Bay LEP 2013 Height of Buildings Map_HOB_004 (N = 14 metres)
(Source: www.legislation.nsw.gov.au)

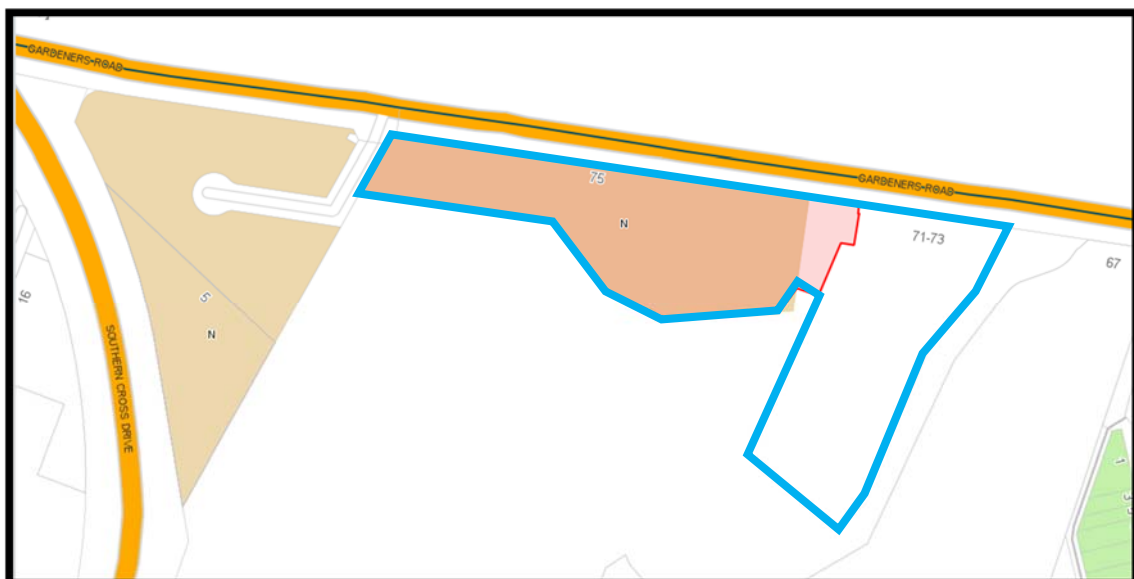


Figure 6 – Botany Bay LEP 2013 Floor Space Ratio (N = 1:1)
(Source: Bayside LGA - Intramaps)

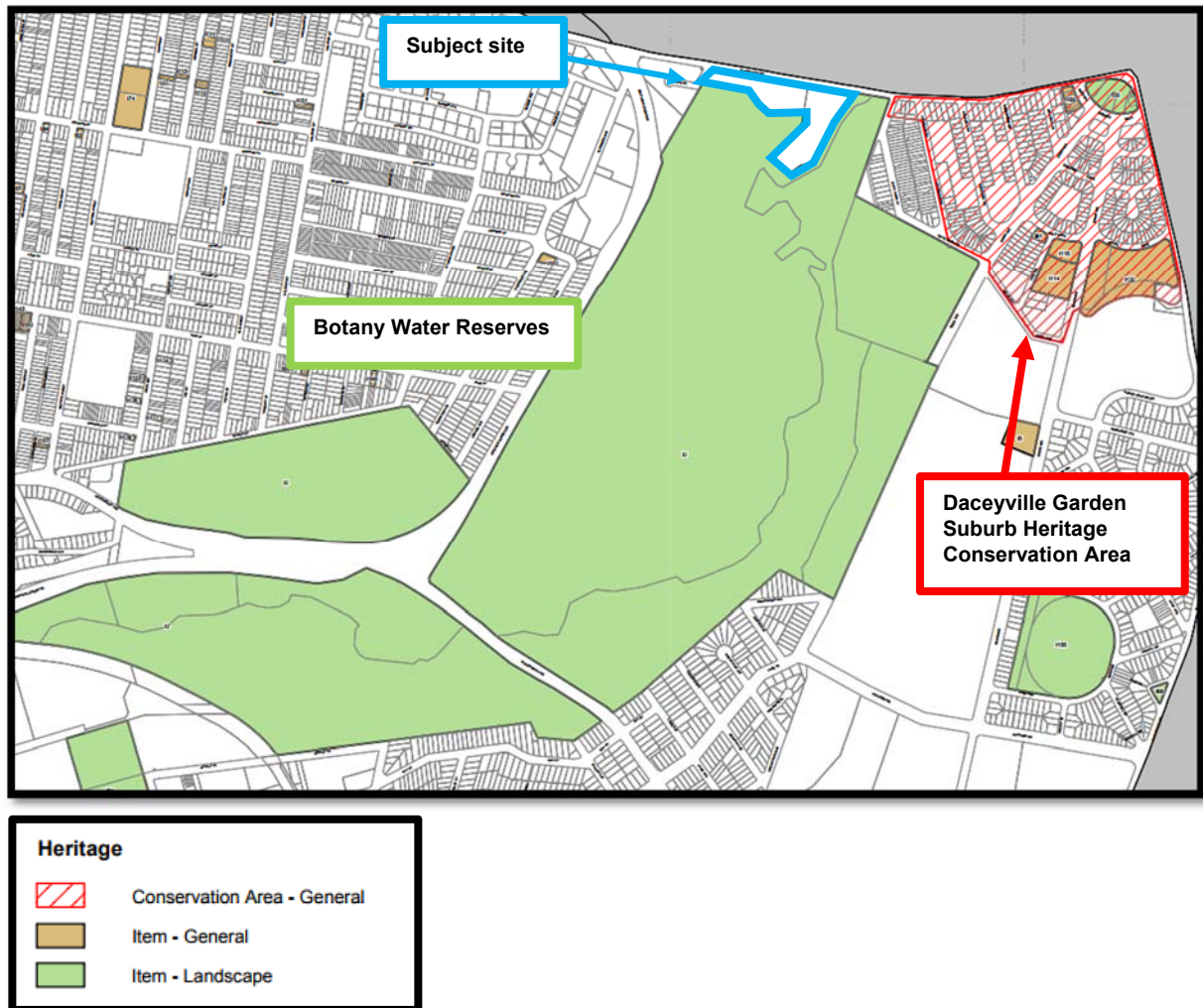


Figure 7: Botany LEP 2013 Heritage Map_HER_004
 (Source: www.legislation.nsw.gov.au)

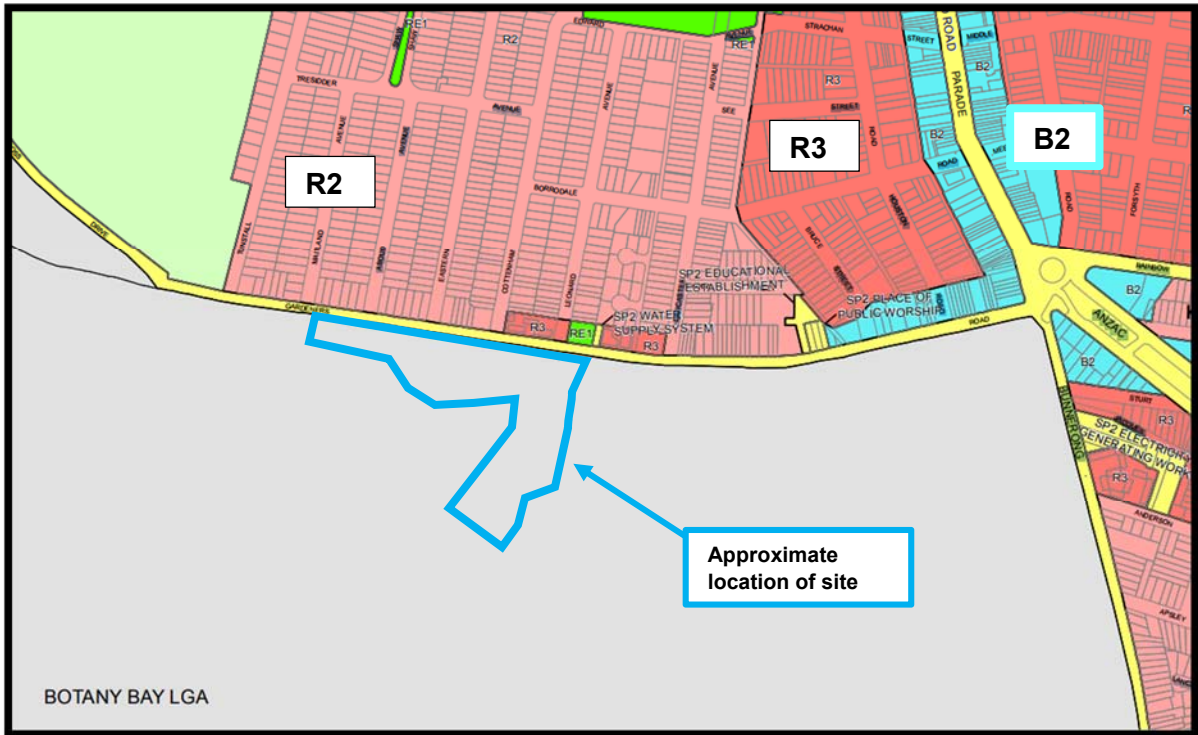


Figure 8: Randwick LEP 2012 Zoning Map_LZN_002
(Source: www.legislation.nsw.gov.au)

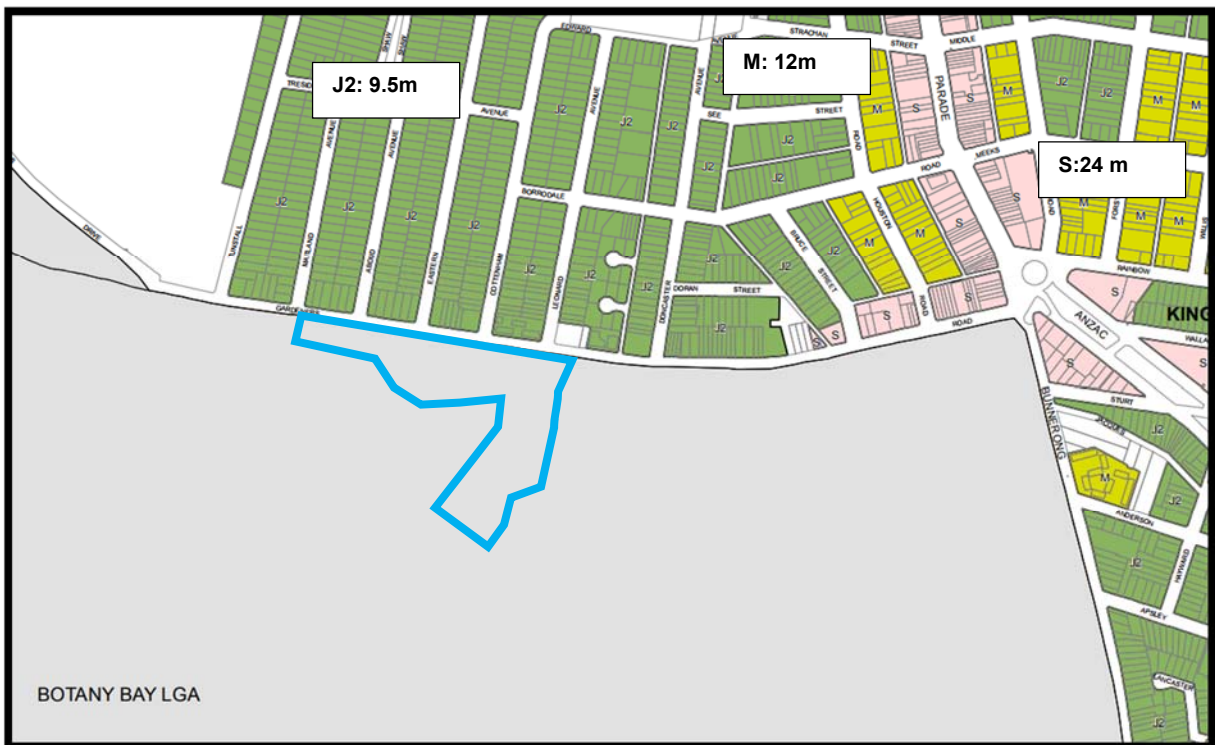


Figure 9: Randwick LEP 2012 Height of Buildings Map_HOB_002
(Source: www.legislation.nsw.gov.au)

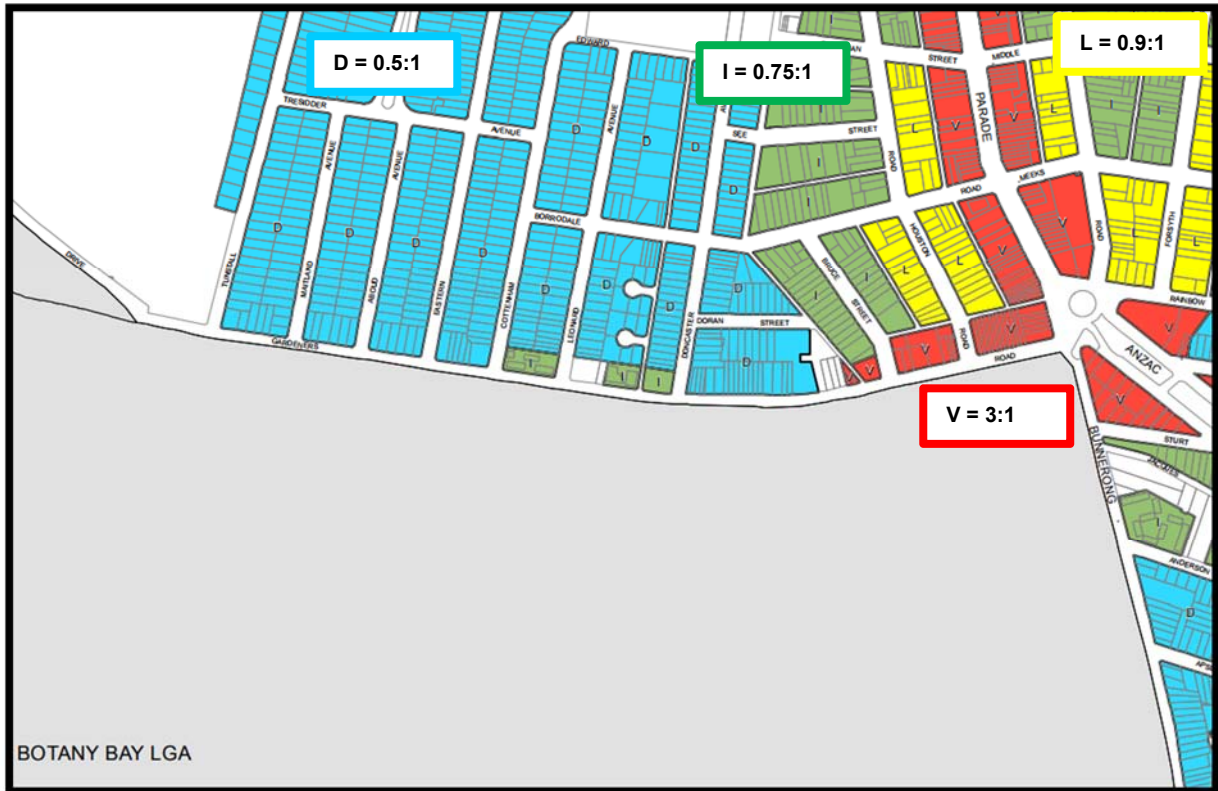


Figure 10: Randwick LEP 2012 Floor Space Ratio Map_FSR_002
(Source: www.legislation.nsw.gov.au)

The site adjoins the Botany Water Reserves (also referred to as the Botany Wetlands), which are listed as heritage items in the Botany Local Environmental Plan 2013 and the State Heritage Register, in the Australian Government Department of Environment and Energy's *Directory of Important Wetlands*. The Botany Water Reserves extend from Gardeners Road to the Mill Pond at the Eastern boundary of the Airport site, as shown in Figure 11, below.

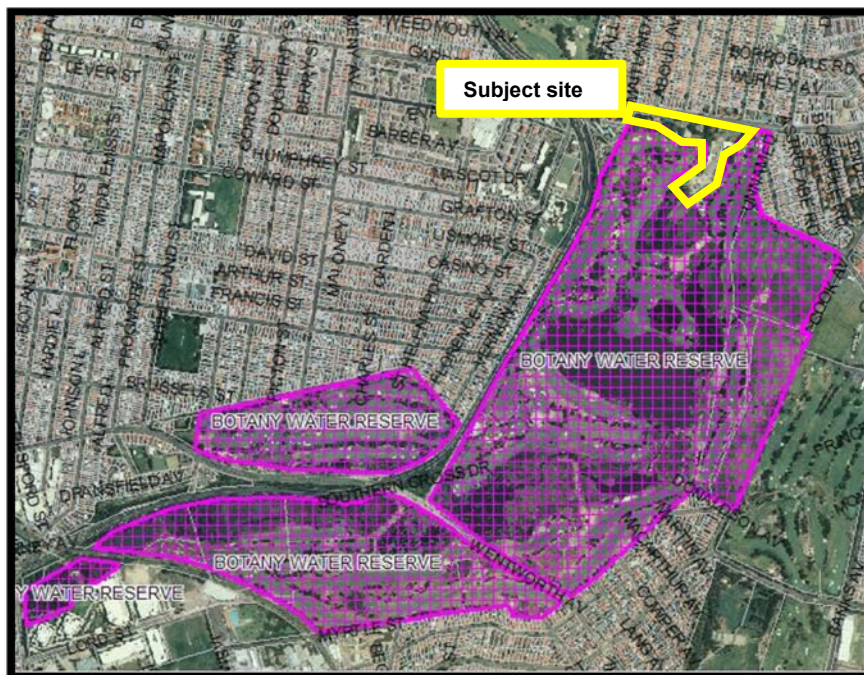


Figure 11: Botany Water Reserves
(Source: www.sydneywater.com.au)

Report

Planning History

The *Botany Local Environmental Plan 1995* (BLEP 1995) included the following provisions:

- 73 Gardeners Road was zoned 5(c) Special Uses; and
- 75 Gardeners Road was zoned 6(c) Open Space Recreation Restricted.

Prior to notification of the BBLEP 2013, Sydney Water Corporation made a submission (see **Attachment 2**) requesting that a B5 Business Development Zone be applied to 75 Gardeners Road. In April 2012 Botany Council resolved to adopt equivalent land use zones for 73 and 75 Gardeners Road - SP1 Special Activities and SP2 Infrastructure. The SP1 zone also included an Additional Permitted Use within Schedule 1 of the Botany LEP 2013 for 75 Gardeners Road, to enable development (subject to consent) for any of the following uses:

- *Entertainment facilities, Food and drink premises; Function centres; Garden centres; Hardware and building supplies; Landscaping material supplies; Recreation areas; and Recreation facilities (indoor)*

The BLEP 1995 ceased applying to the subject site from the commencement date of the BBLEP 2013 (21 June 2013).

In November 2015 the Proponent briefed the Development Committee of the former City of Botany Bay Council about a Draft Masterplan dated 3 November 2015 for 75 Gardeners Road. The Draft Masterplan proposed a floor space ratio (FSR) of 2:1 and building heights ranging from 34 metres to 44.5 metres.

On 10 November 2015, Council officers met with representatives of Sydney Water to provide feedback from Council's Development Committee including:

- *"The proposed heights and FSR were too high. A similar height and FSR should be imposed consistent with Clause 4.3(2A) – Height of Buildings; and Clause 4.4B (Exceptions to floor space ratio in Zone R3 and R4 i.e. a maximum building height of 22 m and FSR of 1.65:1).*
- *An incentive to the FSR and height may be permitted with the requirement for a Design Competition.*
- *The proposal will result in unacceptable traffic impacts, including along Eastern Avenue.*
- *The proposal has limited public benefit. The development should provide a minimum of 0.57 hectares of public open space for 1000 residents. With an average of 2.75 people per dwelling and the provision of 325 dwellings, approximately 5,095 sqm of open space should be provided. Accordingly, the proposal should provide more public open space which may include fitness stations and circuits."*

Draft Planning Proposal

A draft Planning Proposal was lodged with Bayside Council on 29 September 2017 for land at 73 and 75 Gardeners Road, Eastlakes (see **Attachment 1**). The draft Planning Proposal seeks to amend the following provisions in the BBLEP 2013:

- Rezone 73 Gardeners Road from SP2 Infrastructure (Sydney Water Depot) to *Deferred Matter*;

- Rezone 75 Gardeners Road from SP1 Special Activities (Recreation Facility Outdoor) to R4 High Density Residential;
- Increase the Height of buildings from 14m to a range between 29m and 50m;
- Increase the Floor Space Ratio (FSR) from 1:1 to 1.95:1; and
- Include an Additional Permitted Use (*Commercial Uses*).

The proponent states that the draft Planning Proposal would enable a high density residential development comprising approximately 744 new dwellings within five apartment buildings ranging in height between 6 and 14 storeys. The draft Planning Proposal would also include two public parks and three communal open space areas totalling 7,259^{sqm}; café and retail space at ground floor; and pedestrian paths and cycleways throughout the site and into the Botany Wetlands.

The draft Planning Proposal also states that rezoning of the land will enable Sydney Water Corporation, the owner, to divest land that is surplus to their operational needs, as part of a broader asset management strategy.

A comparison for the site of existing and proposed zoning and relevant development standards under the BBLEP 2013 is provided in Table 2, below:

Table 2: Existing and proposed zoning and development standards

73 Gardeners Road		
Development standard	Existing	Proposed
Building height	Non specified	50 metres (ranging between 29 metres and 50 metres)
Floor space ratio	Non specified	1.95:1
Zone	SP2 Infrastructure (Sydney Water Depot)	Deferred Matter
75 Gardeners Road		
Development standard	Existing	Proposed
Building height	14 metres	40 metres
Floor space ratio	1:1	1.65:1
Zone	SP1 Special Activities (Recreation Facility (Outdoor))	R4 High Density Residential

The draft Planning Proposal is not accompanied by either a draft Development Control Plan nor an offer of a Voluntary Planning Agreement.

Assessment of the draft Planning Proposal

Environmental Planning & Assessment Act 1979 (EPAA)

The NSW Department of Planning & Environment's *A Guide to Preparing Planning Proposals* - issued under s55 (3) of the *Environmental Planning and Assessment Act 1979* - provides guidance and information on the process for preparing Planning Proposals. The assessment of the submitted Planning Proposal by Council staff has been undertaken in accordance with the latest version of this *Guide* (dated August 2016).

Section 117 Ministerial Directions

Section 117 Ministerial directions (Section 117 directions) set out what a RPA must do if a S117 direction applies to a Planning Proposal, and provides details on how inconsistencies with the terms of a direction *may* be justified.

An assessment of the Planning Proposal against the applicable S117 directions is provided in **Table 3** below:

Table 3: Planning Proposal consistency with s117 directions.

Ministerial Direction	Planning Proposal consistency with direction	Consistent
2.3 Heritage Conservation	<p>What a RPA must do: A RPA must ensure that a Planning Proposal contains provisions that facilitate the conservation of heritage items, place, building works or precincts of environmental heritage significance to an area.</p> <p><u>Comment:</u> The Planning Proposal was referred to Council's Heritage Advisor, who provided the following comment:</p> <p><i>"The Planning Proposal will have an adverse heritage impact upon the Botany Water Reserves and the Daceyville Heritage Conservation Area. The development has not responded to its context, the heights proposed are too visually dominant, the site planning of 73 Gardeners Road has an unacceptable impact upon the Botany Water Reserves and the podium style built form together with formalised landscaping is at odds with the aesthetic significance of the Water Reserves."</i></p> <p>Council's Heritage advisor recommended that the Planning Proposal should not be supported.</p> <p>Consistency: <i>A Planning Proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:</i></p> <p><i>(a) the environmental or indigenous heritage significance of the item, area, object or place is conserved by existing or draft environmental planning instruments, legislation, or regulations that apply to the land, or</i></p> <p><i>(b) the provisions of the Planning Proposal that are inconsistent are of minor significance.</i></p> <p><u>Comment:</u> The provisions to rezone the land for high density residential purposes are not considered minor given the development outcome potentiated and the impact on the adjoining heritage items. The inconsistency with the direction is not adequately justified.</p> <p>In addition, it is noted that an assessment of the site's Aboriginal heritage significance was not provided as part of the Planning Proposal.</p>	NO
3.1 Residential Zones	<p>What a RPA must do: The RPA must include provisions that encourage the provision of housing that will make more efficient use of existing infrastructure and services.</p> <p><u>Comment:</u> The Planning Proposal seeks to include provisions that will facilitate high density residential development in an out-of-centre location.</p> <p>Consistency: <i>A Planning Proposal may be inconsistent with the direction if the provisions of the Planning Proposal that are inconsistent are justified by either a strategy approved by the Director-General of the Department of Planning (now the Department of Planning & Environment - DPE) that identifies the land; a study prepared in support of the Planning Proposal; or in accordance with the relevant regional strategy, regional plan or subregional strategy.</i></p>	NO

	<p><u>Comment:</u> The site is not identified in any approved strategy for higher density residential development and therefore the inconsistency with the direction is inadequately justified.</p>	
<p>3.4 Integrating Land Use and Transport</p>	<p>What a RPA must do: A Planning Proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development (DUAP 2001)</i> (guidelines).</p> <p><u>Comment:</u> The guidelines encourage the location of higher density housing 'to mix in centres with offices, services and retail development.' The Planning Proposal seeks to locate high density residential development in an out-of-centre location, which is considered inconsistent with the guidelines.</p> <p>Consistency: <i>A Planning Proposal may be inconsistent with the direction if the provisions of the Planning Proposal that are inconsistent are justified by either a strategy approved by the Director-General of DPE that identifies the land; or justified by a study in support of the Planning Proposal; or in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by DPE.</i></p> <p><u>Comment:</u> The land on which the Planning Proposal is situated is not identified in any Regional Strategy, Regional Plan or Sub-Regional Strategy for higher density residential development, therefore the inconsistency with the terms of the direction is inadequately justified.</p>	NO
<p>3.5 Development Near Licensed Aerodromes</p>	<p>What a RPA must do: In the preparation of a Planning Proposal, a RPA must:</p> <ul style="list-style-type: none"> - consult with the Department of the Commonwealth responsible for aerodromes and the lessee of the aerodrome - take into consideration the Obstacle Limitation Surface (OLS) and prepare appropriate development standards such as height where the land is affected by the OLS - obtain permission from the Department of the Commonwealth where the height encroaches the OLS prior to undertaking community consultation - not rezone land for residential purposes where the ANEF exceeds 25 <p><u>Comment:</u> The direction applies because the Planning Proposal seeks to rezone land for residential purposes and is in the vicinity of a licensed aerodrome, namely, Sydney Airport.</p> <p>The Aeronautical Impact Assessment submitted with the Planning Proposal states that the proposed height of buildings does not exceed the Obstacle Limitation Surface (OLS) prescribed for the site, which is 51m AHD and therefore, permission from the Commonwealth Department of Infrastructure and Regional Development (DIRD) is not required prior to community consultation. Nevertheless, consultation with DIRD will be undertaken should the Department of Planning & Environment determine to issue a Gateway Determination.</p> <p>The Planning Proposal to permit residential development with consent is compatible with the operation of the airport given the building height and that the site is not within ANEF contours.</p>	YES

	<p>Consistency: <i>A Planning Proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the Planning Proposal that are inconsistent are:</i></p> <p>(a) <i>justified by a strategy which:</i></p> <ul style="list-style-type: none"> (i) <i>gives consideration to the objectives of this direction, and</i> (ii) <i>identifies the land which is the subject of the Planning Proposal (if the Planning Proposal relates to a particular site or sites), and</i> (iii) <i>is approved by the Director-General of the Department of Planning, or</i> <p>(b) <i>justified by a study prepared in support of the Planning Proposal which gives consideration to the objective of this direction, or</i></p> <p>(c) <i>in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or</i></p> <p>(d) <i>of minor significance.</i></p> <p><u>Comment:</u> No inconsistencies with the terms of the direction were identified.</p>	
4.3 Flood Prone Land	<p>What a RPA must do: A RPA must ensure that a Planning Proposal:</p> <ul style="list-style-type: none"> - includes provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 - must not rezone land within the flood planning areas from Special Use to a Residential Zone - does not permit a significant increase in the development of that land <p><u>Comment:</u> The Planning Proposal seeks provisions that will permit a significant increase in development of the land and seeks to rezone SP1 zoned land (equivalent to a 'Special Use' zone) to residential zoned land, which is inconsistent with the terms of the direction.</p> <p>Consistency: <i>A Planning Proposal may be inconsistent with the direction if the RPA can satisfy the Director-General that:</i></p> <p>(a) <i>the Planning Proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or</i></p> <p>(b) <i>the provisions of the Planning Proposal that are inconsistent are of minor significance.</i></p> <p><u>Comment:</u> The proponent has not submitted a floodplain risk management plan prepared in accordance with the principles and guidelines of the <i>Flood Plain Development Manual 2005</i>, or specifically addressed the NSW Flood Prone Land Policy to support the Planning Proposal and therefore the inconsistency with the terms of the direction have not been adequately justified.</p>	NO

<p>7.1 Implementation of A Plan for Growing Sydney</p>	<p>What a RPA must do: A RPA must ensure that a Planning Proposal is consistent with A Plan for Growing Sydney.</p> <p><u>Comment:</u> Direction 3.2: Aims to ‘create a network of interlinked, multipurpose open and green spaces across Sydney. A more strategic approach to identifying and connecting open spaces will support the development of a city-wide ‘Green Grid’’</p> <p>Direction 3.3: Aims to ‘Create healthy built environments. The direction aims to facilitate social cohesion and community connectivity by linking open spaces to encourage recreational walking and cycling, and support cross-regional trips to centres and other destinations.’</p> <p>Direction 4.1: Aims to ‘protect our natural environment and biodiversity’.</p> <p>Rezoning the subject site is considered inconsistent with Directions 3.2 and 3.3, since the proposal to seek high density residential development is considered to discourage access to the wider the Botany Wetlands in the longer term, and would not facilitate greater community access and linkages to open space.</p> <p>The Planning Proposal is not consistent with Direction 4.1. The site is identified in the NSW Local Land Service’s <i>Biodiversity Corridor Mapping</i> as providing supporting habitat to priority habitats in the Botany Wetlands corridor. All of the mapped land has been identified as areas that should be prioritised for on-ground works to improve habitat connectivity across the Southern Sydney area.</p> <p>It is noted that Goal 3 contained in <i>A Plan for Growing Sydney</i> relates to the creation of ‘a great place to live with communities that are strong healthy and well connected’. Directions 3.2 and 3.3 support this goal.</p> <p>Goal 4 in the Plan aims to create ‘a sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources.’ Direction 4.1 supports this goal.</p> <p>Consistency: <i>A Planning Proposal may be inconsistent with the terms of this direction only if the extent of inconsistency with A Plan for Growing Sydney:</i></p> <p>(a) is of minor significance, and</p> <p>(b) the Planning Proposal achieves the overall intent of the Plan and does not undermine the achievement of its planning principles; directions; and priorities for subregions, strategic centres and transport gateways.</p> <p><u>Comment:</u> The Planning Proposal is inconsistent with directions contained in two of the four goals contained in the Plan and is therefore considered inconsistent with the overall intent of the Plan.</p>	<p>NO</p>
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State Environmental Planning Policies (SEPPs)

An assessment of the Planning Proposal against the relevant SEPPs is provided in **Table 4**, below.

Table 4: Relevant State Environmental Planning Policies

Name of SEPP	Compliance of Planning Proposal with SEPP	Complies Y/ N
State Environmental Planning Policy (Infrastructure) 2007	<p><i>State Environmental Planning Policy (Infrastructure) 2007</i> (Infrastructure SEPP) was introduced to facilitate the delivery of infrastructure across NSW by improving regulatory certainty and efficiency and has specific planning provisions and development controls for infrastructure.</p> <p>LEP Practice Note – PN 10-001 Zoning for Infrastructure in LEPs</p> <p>To complement the provisions of the Infrastructure SEPP, DPE issued practice note <i>PN 10-001 – Zoning for Infrastructure in LEPs</i> (PN 10-001) to provide guidance to councils on zoning public infrastructure land. PN 10-001 establishes six (6) principles for zoning public infrastructure land.</p> <p>Principle 5 – Zoning surplus public land</p> <p>Principle 5 in PN 10-001 is relevant to the Planning Proposal as it provides guidance to councils to ensure new land uses are appropriate and compatible with surrounding land when zoning surplus public land. Principle 5.1 provided principles for zoning surplus public land.</p> <p><i>Principle 5.1 - Zone surplus public land as a compatible land use</i></p> <p><i>Surplus public land should be rezoned to be compatible with surrounding land uses having regard to:</i></p> <ul style="list-style-type: none"> - <i>the nature and character of the subject site</i> <p><u>Comment:</u> The subject site forms a relatively narrow parcel of land between Gardeners Road and the Northern extent of the Lakes Golf Club, which includes the Botany Water Reserves, an item of State Heritage significance (Item I2 in the BBLEP 2013). The Botany Wetlands are also listed in the Australian Government Department of Environment and Energy's <i>Directory of Important Wetlands</i>, and are also identified as forming part of the Mill Stream and Botany Wetlands priority Green Grid corridor.</p> <ul style="list-style-type: none"> - <i>existing adjacent land uses and preferred future uses</i> <p><u>Comment:</u> Existing adjacent land uses include predominantly low density residential development to the North; high density residential development to the West; Eastlakes Golf Club to the East; and The Lakes Golf Club to the South. As noted above, the Lakes Golf Club includes the Botany Wetlands.</p> <p>In relation to preferred future uses, the former City of Botany Bay Council consulted with the community in the preparation of the Directions Paper <i>Botany Vision 2040</i>. The centre piece of the 25 year vision is a major new park based on the Botany Wetlands. This park would connect from Gardeners Road all the way to Sir Joseph Banks Park on the shore of Botany Bay, following the course of the Botany Wetlands.</p> <ul style="list-style-type: none"> - <i>regional strategy priorities</i> <p><u>Comment:</u> An assessment of the consistency of the Planning Proposal with regional strategy priorities is provided in the assessment of the Planning Proposal's consistency with the Strategic Planning Framework in Table 4.</p> <ul style="list-style-type: none"> - <i>availability of services and infrastructure to support new land uses</i> <p><u>Comment:</u> As noted under the heading 'S117 directions', above, the Planning Proposal is inconsistent with S117 direction 3.1 as the</p>	NO

	<p>Planning Proposal seeks provisions that allow higher density residential development in an out-of-centre location; and direction 3.4 as the Planning Proposal is not consistent with the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for Planning and Development</i> (DUAP 2001) by locating higher density residential development outside of a centre. As noted elsewhere, there are no adopted strategic plans that support higher density residential development in this location.</p> <p>In terms of open space infrastructure, the former City of Botany Bay Council commissioned an Open Space & Recreation Needs Analysis in 2012. The analysis found the LGA had a low per capita provision of open space, with an identified need for some 37 ha of new open space and 11 ha for active sports.</p> <p>The need for open space is predicted to worsen as the population increases within the LGA. Population predictions in the 2016 Section 94 Plan predicted a population growth of 1255 persons per year, however a review of current Development Applications and Planning Proposals suggests a growth of 5,378 per year until 2022. Open space provision per 1000 residents is predicted to fall from 2.41 ha/thousand residents in 2016 to 1.5 ha per thousand residents by 2021.</p> <p>It is noted that 75 Gardeners Road is included in the City of Botany Bay Section 94 Development Contributions Plan 2016 (under Item OS33 - Lookout/rest area nursery site, Gardens R Us, off Gardeners Road) for recreation facilities, including a lookout/rest area comprising fencing, landscaping and play equipment.</p> <p>Retention of the site as public land may provide a significant contribution, and enable access to, open space over the longer term for residents of the Bayside LGA and broader locality.</p> <p>The Planning Proposal to rezone the surplus public land to residential is inconsistent with principle 5.1 relating to zoning surplus public land, as the resulting development is considered incompatible with surrounding land uses and the strategic use of the land set out in the strategic planning framework.</p>	
State Environmental Planning Policy No 55- Remediation of Land (SEPP 55)	<p>Clause 6 Contamination and remediation to be considered in zoning or rezoning proposal</p> <p><i>(1) In preparing an environmental planning instrument, a planning authority is not to include in a particular zone (within the meaning of the instrument) any land specified in subclause (4) if the inclusion of the land in that zone would permit a change of use of the land, unless:</i></p> <p><i>(a) the planning authority has considered whether the land is contaminated, and</i></p> <p><i>(b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and</i></p> <p><i>(c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.</i></p> <p><u>Comment:</u> The Planning Proposal was referred to Council's Environmental Scientist, who provided the following comment:</p> <p><i>"I have interpreted that the auditor's recommendations in the Site Audit Report (SAR) can be undertaken once a development application is lodged at that the conclusions in the SAR are that</i></p>	YES

	<i>although not currently suitable that there is no reason the site can't be made suitable for the proposed residential land use rezoning to R4."</i>	
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There are no other SEPPs applicable to the Planning Proposal.

Sydney Regional Environmental Plans (SREPs)

There are no SREPs applicable to the Planning Proposal.

Strategic Planning Framework

Regional, Sub-Regional and District Plans and Strategies include outcomes and specific actions for a range of different matters including housing and employment targets, and identify regionally important natural resources, transport networks and social infrastructure.

An assessment of the Planning Proposal's consistency with the relevant strategic plans is provided in **Table 5**, below.

Table 5: Strategic Planning Framework

Name of Strategic Plan	Directions, priorities, objectives and actions	Planning Proposal consistency with Plan	Consistency Y/N
Regional Plans			
A Plan for Growing Sydney	Refer to the assessment under the heading 'S117 directions', above	Refer to the assessment under the heading 'S117 directions', above	NO - Refer to the assessment under the heading 'S117 directions', above.
Subregional Plans – A Plan for Growing Sydney - Central Subregion	Whilst not specifically identified, the site appears to form part of an area mapped as 'Parks and Reserves'.	The Planning Proposal to rezone the land to residential is not consistent with this mapping.	NO
Draft Greater Sydney Region Plan	<p><i>Objective 31: Public open space is accessible, protected and enhanced.</i></p> <p><i>'Access to high quality open space is becoming increasingly important as higher housing densities, more compact housing and changing work environments develop. Where land for additional open space is difficult to provide, innovative solutions will be needed, as well as a strong focus on achieving the right quality and diversity of open space.'</i></p> <p><i>'The use of golf courses may also be examined to provide a wider range of sport and recreational facilities for local communities. In addition, there may be opportunities to use surplus government-owned land as open space including sport and recreational facilities.'</i></p> <p><i>Objective 32: The Green Grid links parks, open spaces,</i></p>	<p>Rezoning the land to residential would reduce access to the Botany Wetlands in the longer term. The future use of the site should be considered in the broader context of potential repurposing of the adjoining golf course and improving access for the wider community to the Botany Wetlands.</p> <p>The future use of the site should be considered in the broader context of improving</p>	NO

	<p><i>bushland and walking and cycling paths.</i></p> <p><i>'The Greater Sydney Green Grid connects communities to the landscape. It sets a long-term vision for a network of high quality green areas – from regional parks to local parks and playgrounds – that connect town centres, public transport and public spaces to green infrastructure and landscape features. Links are fostered within the public realm by enhancing waterway corridors, transport routes, suburban streets, footpaths and cycleways.'</i></p>	access to the Botany Wetlands.	
District Plans			
Draft revised Eastern City District Plan	<p><i>Planning Priority E16: Enhance and protect views of scenic and cultural landscapes from the public realm.</i></p> <p><i>Planning Priority E17: Increase urban tree canopy cover and delivering Green Grid connections.</i></p> <p><i>Planning Priority E18: Maximise the use of existing open space and protect, enhance and expand public open space.</i></p> <p><i>Investigate opportunities to expand a network of diverse, accessible, high quality open space that responds to the needs and values of communities as populations grow.</i></p>	<p>The Planning Proposal is not consistent with this priority given the impact of the development on views of the Botany Wetlands, an item of State heritage significance.</p> <p>The Planning Proposal to rezone the land to residential would hinder the delivery of Green Grid Connections by creating a visual and physical barrier to accessing the Botany Wetlands over the longer term.</p> <p>The former City of Botany Bay Council commissioned an Open Space & Recreation Needs Analysis in 2012. The analysis found the LGA had a low per capita provision of open space, with an identified need for some 37 ha of new open space and 11 ha for active sports.</p> <p>The need for open space is predicted to worsen as the population increases within the LGA. Population predictions in the 2016 Section 94 Plan predicted a population growth of 1255 persons per year, however a review of current Development Applications and Planning Proposals suggests a growth of 5,378 per year until 2022. Open space provision per 1000 residents is predicted to fall from 2.41 ha/ thousand residents in 2016 to 1.5 ha</p>	NO

		<p>per thousand residents by 2021.</p> <p>Retention of the site as public land may provide a significant contribution and enable access to, open space over the longer term for residents of the former Botany Bay LGA.</p>	
Other Plans and Strategies			
Central District Sydney Green Grid – Spatial Framework and Project Opportunities	<p>The revised draft District Plans set out the long-term vision for the Greater Sydney Green Grid, by mapping opportunities for green grid connections and identify 18 priority Green Grid corridors.</p> <p>One of the identified priority green grid corridors is the Mill Stream and Botany Wetlands Potential Focus Area.</p> <p>The list of priority green grid corridors and accompanying maps can be found in the Office of the Government Architect's publication <i>Central District Sydney Green Grid – Spatial Framework and Project Opportunities</i> (publication).</p> <p>Relevant extracts from the publication are provided below:</p> <p><i>'Botany Wetlands and the Mill Stream extends from Botany Bay and Sydney Airport to Centennial Park through The Australian, Lakes, Eastlakes and Bonnie Doon Golf Courses. The Botany Wetlands are regionally significant as a major recharge source for the Botany Sands Aquifer, and the home of two regionally rare vegetation communities, the Sydney Freshwater Wetlands and the Eastern Suburbs Banksia Scrub. Public use and access along this corridor is limited, and presents a significant opportunity for improved north-south access and cross district access.'</i> (Refer to figure C.7 of the publication, beneath this section of the table).</p> <p><i>'The Botany Wetlands will become an important public open space that connects Centennial Park to Botany Bay. The publicly accessible open space will transform some golf course lands</i></p>	<p>Rezoning the land for residential purposes as proposed is considered to hinder the opportunity for improved access to Botany Wetlands, where access is currently alienated from the wider community.</p> <p>Whilst Council did not formally resolve to adopt <i>Botany Vision 2040</i>, substantial community consultation was conducted, which in part supported "...<i>The transformation of Eastlakes Golf Course into a major public park, re-instating public access to the Botany Wetlands.</i>" Rezoning the land for residential purposes, as outlined in the Planning Proposal, is considered to hinder the opportunity for improved access to Botany Wetlands, where access is currently alienated from the wider community.</p>	NO

	<p><i>into public parklands that pass through the Botany Wetlands.'</i></p> <p><i>'(The former) City of Botany Bay Council have done a number of investigations, including concepts in the "Botany Bay Vision 2040".'</i></p> <p><i>'The project aims to restore community access to the Wetlands, starting with cycling and pedestrian connections from Gardeners Road through the golf courses to Lord St Business Park then along the Millpond to Sir Joseph Banks Park.'</i></p>	
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Figure C.7: Central District – The Recreational Grid (Source: Central District Sydney Green Grid – Office of the Government Architect)



Draft policy Greener Places: Establishing an Urban Green Infrastructure Policy for New South Wales – Government Architects NSW (draft Greener Places policy)	The Government Architect of NSW is currently seeking submissions on the draft policy Greener Places: Establishing an Urban Green Infrastructure Policy for New South Wales (draft Greener Places policy) which seeks to guide the planning and the delivery of the State's network of green spaces and natural and semi-natural systems including parks, rivers, bushland and private gardens (collectively termed 'green infrastructure').	The site is adjacent to the Botany Wetlands, part of the Mill Stream and Botany Wetlands Green Grid corridor. Rezoning the land to residential purposes is considered inconsistent with the draft Greener Places policy and would reduce the delivery of green infrastructure in the longer term.	NO
Office of Strategic Lands: Strategic Business Plan –	The Plan for the Minister's Corporation identifies three goals	As noted above, the Planning Proposal is considered	NO

Plan for the Planning Minister's Corporation	<p>for the Office of Strategic Lands. Goal 1 is to play a key role in the delivery of the Green Grid. It reflects the Minister's ability to make strategic land investments that are beyond the focus of any single agency.</p> <p>The Green Grid is a connected network of green and blue spaces such as parks, bushland, playing fields, rivers, wetlands and the harbour.</p> <p>The concept of a Green Grid for Sydney was identified in <i>A Plan for Growing Sydney (2014)</i>.</p> <p>Developed by the Government Architect Office (GAO), it is the central tenant [sic] of the GSC's District Plans and Towards our Greater Sydney 2056.</p> <p>The Green Grid is a visionary and iterative project that will take decades to deliver. It is at the early stages of implementation planning. Priority projects for each district have been identified in the draft District Plans and a governance framework is being established.</p>	inconsistent with the objectives relating to the delivery of the Green Grid.	
Local Strategies			
Botany Bay Planning Strategy 2031	<p><u>Strategy Principles:</u></p> <p><i>'Consolidate residential activity in and around existing centres.'</i></p> <p><i>'Improve quality of, and access to, open space in the LGA'</i></p> <p><u>Strategy Direction 1: Enhancing Housing and Liveability</u></p> <p><i>'Objective 1.4: Enhance access to high quality open space assets'</i></p>	<p>The site is not identified as being located in or around an existing centre. The scale of development envisaged by the Planning Proposal is not consistent with the strategy principle to consolidate residential activity in and around existing centres.</p> <p>Strategy 2031 recognises that the former Botany LGA has a relatively high open space provision, however access for the wider public is often alienated. The Planning Proposal is considered to further impact access to the adjoining Botany Wetlands over the longer term.</p> <p>The Planning Proposal would impact on access to the Botany Wetlands over the longer term, and would therefore pose significant</p>	NO

	<p><i>'Botany Bay Wetlands is a significant public asset and should be rationalised to increase public access to this area. Ultimately this area could be a Centennial Park style asset for the southern part of the Eastern Suburbs. This will require a review of the current tenure practice by Sydney Water.'</i></p> <p><i>'Action 1.4.1: Enhance access to high quality open space assets'</i></p> <p><i>'Investigate the redevelopment of Botany Bay Wetlands to create a major regional open space asset for the former Botany Bay LGA and Eastern Subregion.'</i></p> <p><u>Strategy Direction 7: Protecting the Natural Environment</u></p> <p><i>'Objective 7.1: Protect and expand high quality flora and fauna corridors and foreshore vegetation.'</i></p> <p><i>'This strategy advocates greater public access to parts of the Botany Wetlands following a rationalisation and reduction of the areas occupied by golf courses. A new regional park should be created with movement and flora corridors to provide habitat for fauna.'</i></p>	<p>limitations on achieving this objective.</p> <p>The Planning Proposal to rezone the land from public land to residential would hinder access to the Botany Wetlands over the longer term.</p> <p>As noted earlier in the report under the heading S117 Directions – 7.1 A Plan for Growing Sydney, NSW Local Land Service's <i>Biodiversity Corridor Mapping</i> maps the land as providing supporting habitat to priority habitats in the Mill Stream and Botany Wetlands Green Grid corridor.</p> <p>The site is also strategically placed adjacent to the Botany Wetlands. Developing the site for residential purposes would impact public access to the Botany Wetlands.</p>	
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Botany Bay Development Control Plan 2013 (BBDCP 2013)

Part 3M Natural Resources

3M.4.5 Social and Cultural Values

Wetlands can have social and cultural values for many people in the community. These values may be nature conservation, recreation, landscape quality, Aboriginal heritage significance and environmental research and education.

- *Objective O1 To conserve and enhance the indigenous and non-indigenous, social and cultural values of wetlands areas including intrinsic, aesthetic, visual, scientific, cultural heritage, archaeological, educational and recreational values.*

Comment: Rezoning the site to facilitate high density residential development is considered inconsistent with this objective given the sites proximity to the Botany Water Reserves. The scale of development potentiated is considered to result in

unacceptable impacts on the visual, aesthetic and heritage values of the Botany Water Reserves.

- *Control C2 Development must be designed to minimise the visual impact on the wetland and ensure that wetlands areas of high scenic value are preserved.*

Comment: The development potentiated by the Planning Proposal is not consistent with this control given the significant visual impacts on the adjoining Botany Wetlands.

Part 8 Character Precincts

8.1 – Eastlakes Character Precinct

The site lies with the Eastlakes Character Precinct of the BBDCP 2013.

8.1.1 Existing Local Character:

The existing local character statement provides the following statement for existing local character which is of relevance to the site:

- *‘The Lakes Golf Course is located to the east and provides visual relief and views for a number of the residential properties however this green space is not available to the public but otherwise the Precinct has an undersupply of local open space.’*

Comment: Developing the site for high density residential would significantly impact views of the Lakes Golf Course.

8.1.2 Desired Future Character:

The desired future character for the Eastlakes Character Precinct provides the following:

- Function & Diversity
 - *Encourage and enhance connections of public domain and open space areas with recreational facilities.*

Comment: Rezoning the site to facilitate high density residential development is not considered consistent with this element of the desired future character as it would tend to discourage connections.

- Heritage
 - *Promote sympathetic urban design and uses that protect and enhance the character and the significance of Heritage Items.*

Comment: As noted earlier in the report, the Planning Proposal was referred Council’s Heritage Advisor who recommended that the Planning Proposal not be supported due to unacceptable impacts on the adjoining heritage items, namely, the Botany Water Reserves and Daceyville Garden Suburb.

- Views
- *Retain existing views.*

Comment: The Planning Proposal does not retain existing views of the Botany Wetlands heritage item given the scale of development potentiated by the Planning Proposal and is therefore inconsistent with this element of the desired future character.

Conclusion

The draft Planning Proposal has been the subject of a merit assessment against the strategic and statutory planning framework as established by the *Environmental Planning and Assessment Act 1979*, relevant guidelines, Planning Circulars and Practice Notes. In considering whether or not to progress the draft Planning Proposal Council is required to consider if the proposed changes to the relevant Local Environmental Plan have strategic merit. In summary, Council's assessment has identified that the Planning Proposal does not establish strategic merit for a change to the planning controls for the following reasons:

1. The draft Planning Proposal is inconsistent with s.117 Direction 2.3 Heritage Conservation. The draft Planning Proposal does not adequately address how the conservation of the environmental heritage of the area will be achieved. It is noted that an assessment of the site's Aboriginal heritage significance was not provided as part of the draft Planning Proposal. It is also considered that the proposed amendments to the Local Environmental Plan would result in an adverse heritage impact on the adjacent Botany Water Reserves and the Daceyville Heritage Conservation Area. The development has not responded to its context, the heights are too visually dominant and the site planning is at odds with the aesthetic significance with the Botany Water Reserves.
2. The draft Planning Proposal is inconsistent with s.117 Direction 3.1 Residential Zones as the proposed development would not meet objective (1)(c) *"to minimise the impact of residential development on the environment"*. Council acknowledges that the proposal would increase housing supply in the local area however the proposed increase in housing supply at the subject land has not been identified in or justified by a strategy (including the Draft Greater Sydney Regional Plan, the Draft Eastern City District Plan') which gives consideration to the loss of the land from its current use for a 'Recreation Facility (Outdoor)' or 'Infrastructure'.
3. The draft Planning Proposal is inconsistent with s.117 Direction 4.3 Flood Prone Land as the subject site is in a flood planning area and as such the proposed development would be contrary to the objectives of the s.117 Direction. Reference is made, in particular, to objective (1)(b) which requires Council to *ensure "consideration of the potential flood impacts both on and off the subject land"*. Residential areas immediately north of Gardeners Road are subject to significant flood affectation with flooding greater than 2.0 metres in some areas. Utilisation of the subject site for water management purposes is necessary to alleviate flooding issues north of Gardeners Road. It is likely that the site has previously been subject to filling to raise it to its current ground level – prior to filling the site is likely to have been part of the overland flow path for water entering the Botany Water Reserves from the catchment to the north of Gardeners Road.

The s.117 Direction also clearly states (5) *"A Planning Proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation...to a*

residential, Business, Industrial, Special Use or Special Purpose Zone.” Furthermore, clause (6) of the Direction establishes that a Planning Proposal ‘*must not contain provisions that apply to the flood planning areas which: (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or service*’. The Planning Proposal is inconsistent with this Direction and cannot be progressed as it is not justified by a Floodplain Risk Management Plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005 (refer s.117 Direction 4.3 (9)) nor has Bayside Council been provided with detailed information about how Sydney Water proposes to alleviate flooding to the north of the site.

The stated intent of Sydney Water is to achieve a rezoning and divestment of the site. Consideration of the site context and the information provided to Council regarding flood conditions indicates that the site could be utilised to achieve multiple outcomes for the benefit of the community and environment, including provision of open space and improved water management. Alternative flood mitigation measures and construction of infrastructure to alleviate off site flooding appears likely to result in a substantially increased requirement for government spending on flood mitigation measures and infrastructure. Bayside Council has not been provided with any cost:benefit analysis information to justify inconsistency with s.117 Direction 4.3 cl. 6(d).

4. The draft Planning Proposal is inconsistent with the Department of Planning and Environment’s Practice Note ‘Zoning for Infrastructure in LEPS’ PN 10-001 which provides guidance to Councils on zoning public infrastructure land in Standard Instrument Local Environmental Plans. The Practice Note indicates that Council should rezone ‘surplus public land’ to the adjacent zone. Sydney Water have indicated that 73 and 75 Gardeners Road are ‘surplus public land’. However, 73 Gardeners Road is currently identified as a ‘Recreation Facility – Outdoor’, yet Council has received no information from Sydney Water which justifies the designation of the Recreation Facility land as ‘surplus public land’. Furthermore, the site is enveloped by the Botany Water Reserves, and therefore the dominant adjacent land use is also ‘SP1 Recreation Facility – Outdoor’. In this context and given the importance of the site for future flood mitigation and management the draft Planning Proposal does not have strategic merit. In relation to 75 Gardeners Road it is noted that the current zone is ‘SP2 Infrastructure – Sydney Water Depot’ and is subject to a review of operations. Council therefore has no basis to consider that the land is ‘surplus public land’. Sydney Water are seeking its designation as a ‘Deferred Matter’.
5. The subject site is identified in a number of key strategic documents as providing a green link between Gardeners Road and the extensive areas of open space and golf courses to the south which accommodate wetlands and remnant vegetation. The draft Planning Proposal does not adequately justify the rezoning and subsequent divestment of public purpose land. The site represents a key opportunity to implement the strategic directions and public benefits which are outlined in key strategic planning documents including *A Plan for growing Sydney, the Draft Eastern City District Plan, Greener Places*.
6. The draft Planning Proposal is inconsistent with Part 3M - Natural Resources (4.5 Social and Cultural Values) and Part 8 - Character Precincts (8.1.2 Desired Future Character of the Eastlakes Character Precinct).

Community Engagement

Adjoining landowners and occupiers in the vicinity of the subject site, including those North of Gardeners Road within the Randwick Local Government Area, have been notified of the Bayside Planning Panel meeting.

Attachments

- 1 Planning Proposal
 (Part 1 of 2 – Planning Proposal)
 (Part 2 of 2 – Planning Proposal)
- 2 Draft BBLEP 2013 Submission by Sydney Water Corporation