

10.3. Preparation of Planning Proposal to amend Planning Controls for Berrys Bay Foreshore

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ATTACHMENTS	Nil
CSP LINK	<p>Outcome 1 – A healthy environment with thriving ecosystems and strong climate resilience E1. Restore and protect diverse ecosystems</p> <p>Outcome 2 - A connected and socially inclusive community where everyone is valued S2. Provide new and improved public and community spaces for people to meet and connect</p> <p>Outcome 3 - An active community with space for everyone to exercise and enjoy the outdoors O3. Provide new and upgraded facilities within existing public spaces to increase amenity, accessibility and diversity O4. Manage our open space and recreational facilities to ensure that they are well maintained and shared</p> <p>Outcome 6 - A vibrant LGA where culture and creativity is enjoyed by all C1. Respect and acknowledge First Nations culture and history C2. Preserve and celebrate North Sydney’s heritage</p> <p>Outcome 8 - An effective, accountable and sustainable Council that serves the community G1. Develop clear goals, create a plan to achieve them, and track progress with transparency and honesty</p>

PURPOSE:

The purpose of this report is to advise Council of the initiation of a Planning Proposal to amend the planning controls under North Sydney Local Environmental Plan 2013 (NSLEP 2013) for the western foreshore of Berrys Bay, to facilitate the implementation of a future foreshore public open space and community corridor, and to ensure that these planning controls are consistent with the desired long-term use of the use and function of this land.

EXECUTIVE SUMMARY:

- Transport for NSW (TfNSW) has been liaising with Council and members of the community to prepare a masterplan for the corridor between Carradah Park and ‘Woodleys Shed’ on the western foreshore of Berrys Bay. This has arisen following the

removal of the need to utilise this land for the construction of the Western Harbour Tunnel project, as initially envisaged.

- One of the key components of the work being conducted by TfNSW is the design of a new community building to replace the “Woodley’s” industrial shed structure. The entire precinct on this western foreshore of Berrys Bay has a strong maritime industrial past, and this is reflected in the current zoning regime under the provisions of NSLEP 2013.
- The precinct is currently zoned ‘W4 – Working Waterfront’, under the provisions of the NSLEP 2013 which is reflective of historic State Government positions, established in the 1990’s, to maintain a working harbour foreshore.
- Given the current efforts to open up public access and the usability of this foreshore corridor as an area of public open space, it is appropriate to review the planning controls in order to facilitate these evolving aspirations.
- This report advises Council that staff will commence the preparation of a Planning Proposal to amend the NSLEP 2013 in order to explore a more flexible and appropriate zoning regime for this corridor, to ensure that the planning controls are aligned with Council’s and the community’s long-term aspirations for this foreshore corridor.

RECOMMENDATION:

1. THAT Council resolve to prepare a Planning Proposal to amend the North Sydney Local Environmental Plan 2013 to provide a greater level of flexibility in land use permissibility to the western foreshore of Berry’s Bay, to assist with the implementation of the long-term vision for this foreshore corridor for community and public open space purposes.

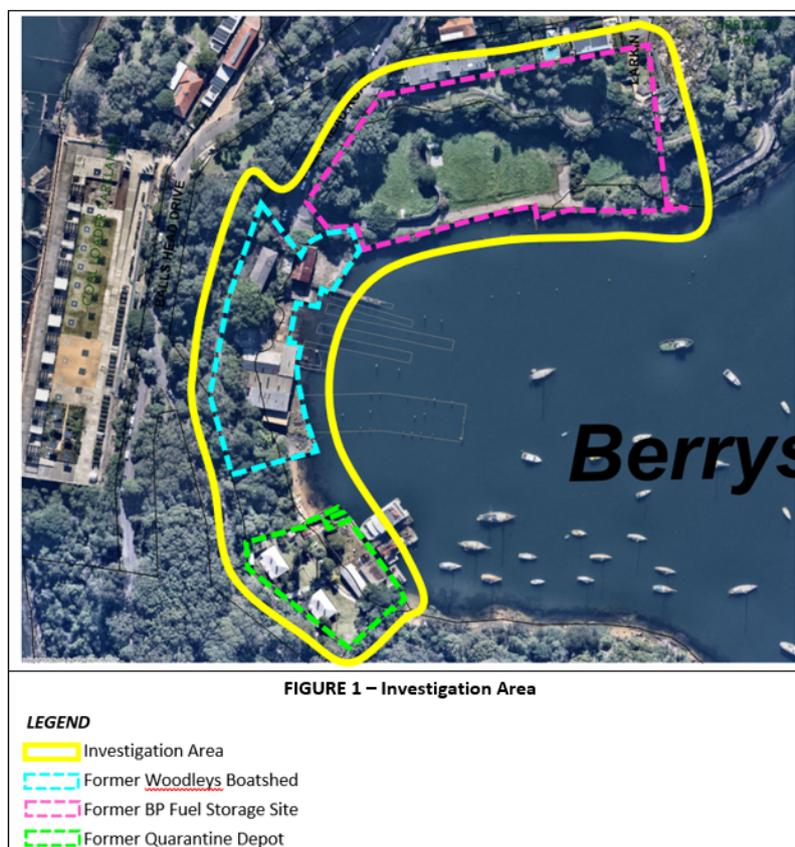
2. THAT a Councillor Briefing be conducted prior to reporting the Planning Proposal to the North Sydney Local Planning Panel, to provide a more detailed account of the Proposal’s provisions.

3. THAT a further report be prepared for Council’s consideration after the matter has been considered by the North Sydney Local Planning Panel.

1. Background

Parts of the sites were initially identified as being needed for the construction of the Western Harbour Tunnel project. In further developing the project and responding to objections raised, the State Government revised its initially proposed construction techniques, meaning that the land was no longer needed for this purpose. The State Government subsequently determined that the land be returned to the public for community and recreation purposes.

TfNSW is currently in the process of creating a Masterplan for foreshore parkland at Berrys Bay that is intended to be redeveloped and returned to Council's care and control. The Masterplan seeks to complement the adjoining Carradah Park (to the North) and the Quarantine Boat Depot site (to the south). The Masterplan being prepared consists of three precincts as shown in Figure 1 below, comprising the former BP Site (pink outline), Woodleys Boatyard (blue outline), and the former Quarantine Boat Depot (green outline).



Council considered a report on this matter at its meeting of 25 November 2024. This can be accessed at: <https://www.northsydney.nsw.gov.au/ecm/download/document-11286147>.

The proposal has progressed since this time; TfNSW has been developing a Place Design and Landscape Plan (PDLP) and will soon be in a position to publicly exhibit this for community comment.

The specifics and details of that PDLP will be the subject of further discussion and reporting with both the community and Council. It is understood that the community engagement process will commence imminently.

2. Report

2.1 Zoning and Planning Controls

2.1.1 North Sydney Local Environmental Plan 2013

The zoning controls applicable to the western side of Berrys Bay have been in place for many years and relate to previous industrial uses that associated strongly with their harbourside location. Such operations included the former BP use for fuel storage (which ceased in the 1980s) and the Woodleys Boat Shed (boat building and repair use), which continued to operate until the early 2010s.

Figure 2 is an extract from NSLEP 2013, highlighting that the predominant zone applying to the area being planned by TfNSW is W4 - Working Waterfront. The southern portion of the area being considered is largely zoned C2 - Environmental Conservation.

Extracts of land use tables applying to these zones from NSLEP 2013, are included below.

Zone W4 - Working Waterfront

1. Objectives of zone

- *To retain and encourage industrial and maritime activities on foreshores.*
- *To identify sites for maritime purposes and for activities requiring direct foreshore access.*
- *To ensure that development does not have an adverse impact on the environment and visual qualities of the foreshore.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of development on land uses in other zones.*

2. Permitted without consent

Environmental protection works.

3. Permitted with consent

Aquaculture; Boat building and repair facilities; Boat launching ramps; Charter and tourism boating facilities; Jetties; Kiosks; Light industries; Marinas; Roads; Signage.

4. Prohibited

Any development not specified in item 2 or 3.

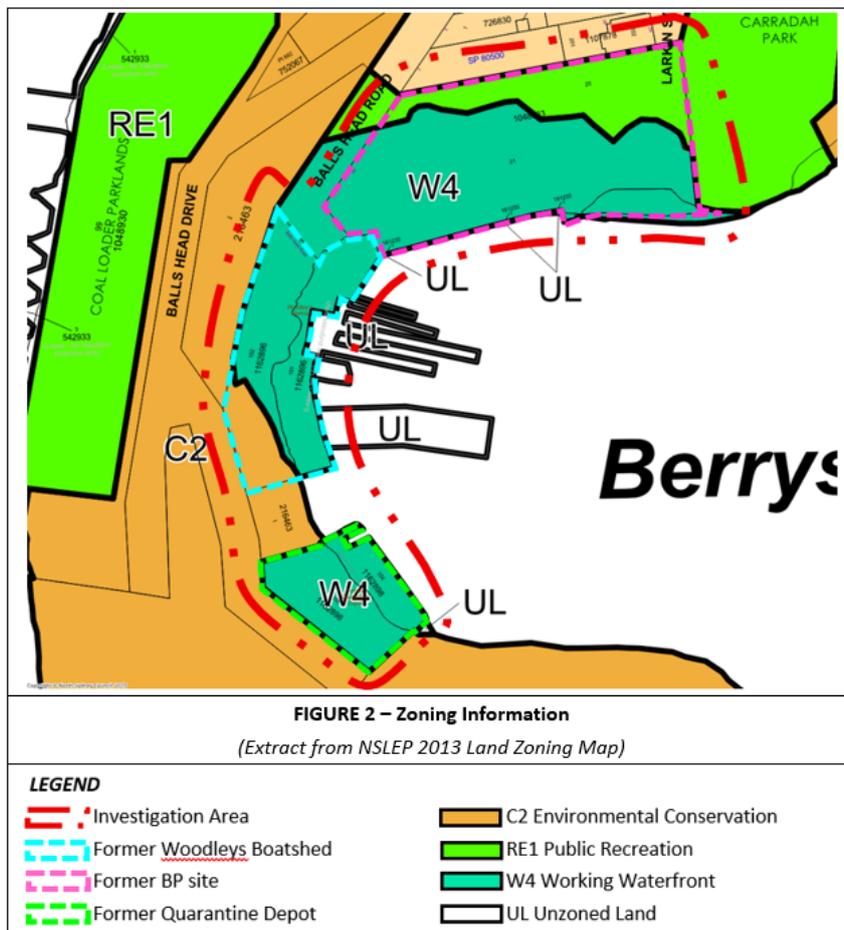
Zone C2 - Environmental Conservation

1. Objectives of zone

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To protect and preserve bushland to provide representation of the natural state and to enable existing animal and plant communities to survive in the long term.*
- *To allow, where appropriate, for low-impact recreational opportunities, which will protect the value of bushland.*

2. Permitted without consent
Environmental protection works
3. Permitted with consent
Environmental facilities; Oyster aquaculture Roads
- 4 Prohibited
Business premises; Hotel or motel accommodation; Industries; Local distribution premises; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 3.

The distribution of these NSLEP 2013 zones is included in Figure 2 below.



The W4 - Working Waterfront zone was relevant to the land when it accommodated industrial uses. As discussed, this has not been the case for some years. Additionally, given the stated aims of the NSW Government (through TfNSW) to create a community, open space focus along this foreshore corridor whilst recognising its maritime industrial history, it is clear that the current planning controls are in need of review.

2.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The provisions of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (in particular Chapter 6) also apply to this corridor. Of note, the former BP site is identified as a “Strategic Foreshore Site” under the SEPP. The former Woodleys site is not identified as being part of a Strategic Foreshore Site under this planning instrument.

The SEPP requires that development must not take place on a strategic foreshore site, unless:

- there is a Masterplan in place; and
- consideration has been given to the masterplan.

There is no requirement for a development to be consistent with an adopted masterplan (which had originally been a requirement when these provisions first came into effect in 1998 – under a different planning instrument).

The Waverton Peninsula Strategic Masterplan was adopted by Council in 1999 and satisfies these masterplan requirements under the SEPP. As part of any planning proposal seeking to amend Council’s LEP, Council staff will engage with the Department of Planning, Housing, and Industry to determine any considerations or process that may be required under the SEPP to address the masterplan requirements. This may involve the need to amend or replace the 1999 masterplan.

It is noted that the current planning controls under NSLEP 2013 reflect the desired outcomes of the Waverton Peninsula Strategic Masterplan. In particular, it envisages working waterfront uses adjacent to Sydney Harbour, with public recreation on the higher rear sections of the former BP site.

3. Preparation of a Planning Proposal

The stated objectives and directions of the PDLP clearly articulate NSW Government’s desire and preparedness to create an open space corridor characterised by public access and community use and enjoyment of this foreshore corridor.

To assist in the realisation of this vision, it will be necessary to amend the planning controls to better reflect the intended future use of the land. If changes are proposed to the predominant use of the corridor or new structures are pursued in line with the PDLP, the objectives of the W4 - Working Waterfront zone may create challenges in obtaining future approvals that require development consent.

In addition, the future use of any re-imagined Woodley’s Shed structure that may be identified in the PDLP may be difficult to approve given the constrained planning restrictions that currently apply to the site. Whilst TfNSW has a planning pathway for the actual reused or reconstructed Woodley’s Shed, the planning controls applying to the land may pose significant constraints to a future use of that structure.

These issues can be addressed by amending NSLEP 2013, through the preparation of a Planning Proposal. There are various options to achieve the stated outcome of increasing flexibility and relevance of the applicable planning controls. These would be outlined in the Planning Proposal and may include a change of zoning or increasing the types of land uses that are permissible within the existing zone(s).

There is a legal requirement to present the Planning Proposal to the North Sydney Local Planning Panel prior to formally reporting to Council. The purpose of this paper is to notify Council that staff will commence preparation of a Planning Proposal with its broad objectives of facilitating the long-term viability and implementation of an open space, activated, and community-focussed open space foreshore corridor at Berrys Bay.

It is intended that a Councillor Briefing will be held prior submission of the Planning Proposal to the North Sydney Local Planning Panel, to advise the direction and detail being proposed before the proposal is available in the public domain. If Council subsequently resolves to endorse the Planning Proposal, it will then be forwarded to the Department of Planning, Housing, and Infrastructure for a Gateway Determination ahead of any formal public exhibition.

Consultation requirements

Community engagement relating to the PDLP will be undertaken by TfNSW imminently. Community engagement relating to any future Planning Proposal will be undertaken in accordance with Council's Community Engagement Strategy and terms of any Gateway Determination that is issued.

Financial/Resource Implications

The preparation of the Planning Proposal would be undertaken by Council staff with negligible expenditure required.

Legislation

The legislative requirements associated with the preparation of an amendment to the NSLEP are governed by the Environmental Planning and Assessment Act.