



New South Wales

State Environmental Planning Policy Amendment (Stage 1 Bays West Precinct) 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

State Environmental Planning Policy Amendment (Stage 1 Bays West Precinct) 2022

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy Amendment (Stage 1 Bays West Precinct) 2022*.

2 Commencement

This Policy commences on the day on which it is 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This Policy is repealed at the beginning of the day following the day on which this Policy commences.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 *State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021*, Chapter 4 are amended or replaced, as the case requires, by the maps approved by the Minister on the making of this Policy.

Schedule 1 Amendment of State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021

[1] Section 2.7 State significant precincts

Omit “7” from section 2.7(1). Insert instead “8”.

[2] Section 2.8 Development for which Minister is consent authority under the Act, Part 4

Insert after section 2.8(5)—

- (5A) **Stage 1 Bays West Precinct** Development with a capital investment value of more than \$10 million on land to which Appendix 8 applies.

[3] Appendix 8

Insert after Appendix 7—

Appendix 8 Stage 1 Bays West Precinct

Part 1 Preliminary

1 Land to which Appendix applies

This Appendix applies to the land identified on the Land Application Map, referred to in this Appendix as the *Stage 1 Bays West Precinct*.

2 Interpretation

- (1) In this Appendix—

Active Street Frontages Map means the State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021 Bays West Active Street Frontages Map.

Design Guide means the *Stage 1 Bays West—White Bay Power Station (and Metro) Design Guide*, published by the NSW Department of Planning and Environment in December 2022.

Floor Space Ratio Map means the State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021 Bays West Floor Space Ratio Map.

Height of Buildings Map means the State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021 Bays West Height of Buildings Map.

heritage item means a building, work, place, relic, tree, object or archaeological site the location and nature of which is described in Schedule 9 and shown on the Heritage Map.

Heritage Map means the State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021 Bays West Heritage Map.

Land Application Map means the State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021 Bays West Land Application Map.

Land Zoning Map means the State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021 Bays West Land Zoning Map.

Place Strategy means the *Bays West Place Strategy*, published by the NSW Department of Planning, Industry and Environment in November 2021.

residential development means development for the purposes of residential accommodation involving—

- (a) the construction of a new building, or

- (b) if the development has a capital investment value of at least \$10 million—alterations to, or the enlargement or extension of, an existing building.

Site A means land identified as “Site A” on the Land Application Map.

Site B means land identified as “Site B” on the Land Application Map.

Site C means land identified as “Site C” on the Land Application Map.

Site D means land identified as “Site D” on the Land Application Map.

Solar Access to Public Open Space Map means the State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021 Bays West Solar Access to Public Open Space Map.

- (2) A word or expression used in this Appendix has the same meaning as in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* unless otherwise defined in this Appendix.

3 Aims of Appendix

The aims of this Appendix are as follows—

- (a) to support development of the Stage 1 Bays West Precinct that—
 - (i) is consistent with the Design Guide and the Place Strategy, and
 - (ii) balances growth and change with the character, heritage and amenity of the site,
- (b) to reinforce the Stage 1 Bays West Precinct as a mixed use precinct integrated with enhanced port and working harbour activities, supported by—
 - (i) the adaptive re-use of the White Bay Power Station, and
 - (ii) more convenient and direct active transport connections through the Sydney Metro,
- (c) to support the revitalisation of critical heritage assets and create an international gateway at the White Bay Cruise Terminal by—
 - (i) capitalising on the innovation corridor to adopt new technologies and sustainable port operations, and
 - (ii) building a world-class foreshore walk with walking and cycling connections,
- (d) to ensure the ongoing growth of employment floor space and residential accommodation in Sydney to meet NSW government forecasts for housing,
- (e) to ensure future land uses in the White Bay Power Station can deliver a viable development outcome that enhances and celebrates the building’s heritage, while supporting a vibrant night-time economy and innovative cultural and creative uses,
- (f) to ensure future development acknowledges and embeds Country, reflects indigenous design principles and provides opportunities to connect with Country.

Part 2 Permitted or prohibited development

4 Land use zones

The land use zones under this Appendix are as follows—

Employment Zones

E2 Commercial Centre

Mixed Use Zones

MU1 Mixed Use

Special Purpose Zones

SP1 Special Activities

Recreation Zones

RE1 Public Recreation

5 Zoning of land to which Appendix applies

For Chapter 2, land is within the zones shown on the Land Zoning Map.

6 Zone objectives and Land Use Table

- (1) The Land Use Table specifies for each zone—
 - (a) the objectives for development, and
 - (b) development that may be carried out without development consent, and
 - (c) development that may be carried out only with development consent, and
 - (d) development that is prohibited.
- (2) The consent authority must have regard to the objectives for development in a zone when determining a development application in relation to land in the zone.
- (3) In the Land Use Table, a reference to a type of building or other thing—
 - (a) is a reference to development for the purposes of the type of building or other thing, and
 - (b) does not include a reference to a type of building or other thing referred to separately in the Land Use Table in relation to the same zone.
- (4) This section is subject to the other provisions of this Appendix.

Land Use Table

Zone E2 Commercial Centre

1 Objectives of zone

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To ensure uses support the viability of centres.

2 Permitted without consent

Nil

3 Permitted with consent

Amusement centres; Artisan food and drink industries; Centre-based child care facilities; Commercial premises; Community facilities; Educational

establishments; Entertainment facilities; Function centres; Information and education facilities; Light industries; Medical centres; Passenger transport facilities; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Tank-based aquaculture; Tourist and visitor accommodation; Vehicle repair stations; Veterinary hospitals; Any other development not specified in item 2 or 4

4 Prohibited

Advertising structures; Animal boarding or training establishments; Car parks; Industrial retail outlets; Industries; Residential accommodation; Serviced apartments; Storage premises

Zone MU1 Mixed Use

1 Objectives of zone

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations to maximise public transport patronage and encourage walking and cycling.
- To ensure residential accommodation is suitably located to protect amenity and minimise environmental impacts related to air quality, wind and noise.

2 Permitted without consent

Nil

3 Permitted with consent

Amusement centres; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Information and education facilities; Light industries; Local distribution premises; Medical centres; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation facilities (indoor); Recreation facilities (major); Registered clubs; Respite day care centres; Residential accommodation; Roads; Tourist and visitor accommodation; Any other development not specified in item 2 or 4

4 Prohibited

Animal or boarding training establishments; Car parks; Extractive industries; Heavy industrial storage establishments; Helipads; Industries; Storage premises; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres

Zone SP1 Special Activities

1 Objectives of zone

- To provide for special land uses that are compatible and consistent with the *White Bay Power Station Conservation Management Plan*, dated March 2013.
- To provide for sites with special natural characteristics that are not provided for in other zones.

- To facilitate development that is in keeping with the special characteristics of the White Bay Power Station, and that minimises any adverse impacts on surrounding land.
- To facilitate development in the White Bay Power Station that will enable a range of appropriate commercial, creative, entertainment and community uses.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Hotel or motel accommodation; Information and education facilities; Light industries; Recreation facilities (indoor); Recreation facilities (outdoor)

4 Prohibited

Any development not specified in item 2 or 3

Zone RE1 Public Recreation

1 Objectives of zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To facilitate public access to and along the foreshore.
- To conserve public open space that enhances the scenic and environmental quality of the Stage 1 Bays West Precinct and Sydney Harbour.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Aquaculture; Biosolids treatment facilities; Community facilities; Environmental facilities; Jetties; Kiosks; Marinas; Mooring pens; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Roads; Take away food and drink premises; Water recycling facilities

4 Prohibited

Any development not specified in item 2 or 3

Part 3 Principal development standards

7 Height of buildings

- (1) The objectives of this section are as follows—

- (a) to ensure buildings are compatible with the height, bulk and scale of the desired future character of the area, and positively contribute to the streetscape and public spaces,
 - (b) to ensure protected view corridors to and from the White Bay Power Station are kept,
 - (c) to ensure the height of buildings includes lift overruns, plant and architectural roof features and other roof elements,
 - (d) to protect the amenity of residential accommodation, neighbouring properties and public spaces in relation to—
 - (i) visual and acoustic privacy, and
 - (ii) solar access and view sharing.
- (2) The height of a building must not exceed the maximum height shown for the land on the Height of Buildings Map.

8 Floor space ratio

- (1) The objectives of this section are as follows—
- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,
 - (b) to regulate the density of development, built form and land use intensity,
 - (c) to control the generation of vehicular and pedestrian traffic,
 - (d) to provide for an intensity of development proportionate to the capacity of existing and planned infrastructure,
 - (e) to ensure new development—
 - (i) reflects the desired character of the area in which it is located, and
 - (ii) minimises adverse impacts on the amenity of the area.
- (2) The maximum floor space ratio for a building must not exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

9 Calculation of floor space ratio and site area

(1) Objectives

The objectives of this section are as follows—

- (a) to define *floor space ratio*,
- (b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to—
 - (i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and
 - (ii) prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and
 - (iii) require community land and public places to be dealt with separately.

(2) Definition of “floor space ratio”

The *floor space ratio* of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

(3) **Site area**

In determining the site area of proposed development for the purpose of applying a floor space ratio, the *site area* is taken to be—

- (a) if the proposed development is to be carried out on only one lot—the area of that lot, or
- (b) if the proposed development is to be carried out on 2 or more lots—the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.

In addition, subsections (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

(4) **Exclusions from site area**

The following land must be excluded from the site area—

- (a) land on which the proposed development is prohibited, whether under this Policy or any other law,
- (b) community land or a public place, except as provided by subsection (7).

(5) **Strata subdivisions**

The area of a lot that is wholly or partly on top of another or others in a strata subdivision is to be included in the calculation of the site area only to the extent that it does not overlap with another lot already included in the site area calculation.

(6) **Only significant development to be included**

The site area for proposed development must not include a lot additional to a lot or lots on which the development is being carried out unless the proposed development includes significant development on that additional lot.

(7) **Certain public land to be separately considered**

For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.

(8) **Existing buildings**

The gross floor area of any existing or proposed buildings within the vertical projection (above or below ground) of the boundaries of a site is to be included in the calculation of the total floor space for the purposes of applying a floor space ratio, whether or not the proposed development relates to all of the buildings.

(9) **Covenants to prevent “double dipping”**

When development consent is granted to development on a site comprised of 2 or more lots, a condition of the consent may require a covenant to be registered that prevents the creation of floor area on a lot (the *restricted lot*) if the consent authority is satisfied that an equivalent quantity of floor area will be created on another lot only because the site included the restricted lot.

(10) **Covenants affect consolidated sites**

If—

- (a) a covenant of the kind referred to in subsection (9) applies to any land (*affected land*), and
- (b) proposed development relates to the affected land and other land that together comprise the site of the proposed development, the maximum amount of floor area allowed on the other land by the floor space ratio fixed for the site by this Appendix is reduced by the quantity of floor space area the covenant prevents being created on the affected land.

(11) **Definition**

In this section—

public place has the same meaning as in the *Local Government Act 1993*.

10 Site area of development includes dedicated land

In calculating a floor space ratio under section 9, the site area of development on land in the Stage 1 Bays West Precinct includes land—

- (a) dedicated to the Council or another public authority for a public purpose, or
- (b) otherwise set aside as—
 - (i) publicly accessible open space, or
 - (ii) a pedestrian link.

11 Concurrence of Planning Secretary

- (1) Development consent must not be granted to development unless the consent authority has obtained the concurrence of the Planning Secretary.
- (2) In deciding whether to grant concurrence, the Planning Secretary must consider the following—
 - (a) the impact of the development on—
 - (i) existing designated State public infrastructure, and
 - (ii) the need for additional designated State public infrastructure,
 - (b) the cumulative impact of the development with other development that has, or is likely to be, carried out in surrounding areas on—
 - (i) existing designated State public infrastructure, and
 - (ii) the need for additional designated State public infrastructure,
 - (c) the steps taken to address those impacts, including whether a planning agreement has been, or will be, entered into contributing to designated State public infrastructure.
- (3) In deciding whether to grant concurrence, the Planning Secretary must also consult the public authorities that the Planning Secretary considers relevant to the development.
- (4) This section does not apply to development if all or part of the land on which the development is to be carried out is in a special contributions area to which a determination under the Act, section 7.23 applies.
- (5) In this section—

designated State public infrastructure means public facilities or services that are provided or financed by the State, or if provided or financed by the private sector, to the extent of the financial or in-kind contribution by the State, of the following kinds—

 - (a) State and regional roads,

- (b) bus interchanges and bus lanes,
- (c) rail infrastructure and land,
- (d) regional parks and public space,
- (e) social infrastructure and facilities, including schools, hospitals, emergency services and justice facilities.

12 Exceptions to development standards

- (1) The objectives of this section are as follows—
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this section, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this section does not apply to a development standard that is expressly excluded from the operation of this section.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
 - (a) the consent authority is satisfied that—
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subsection (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) After determining a development application made under this section, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subsection (3).
- (7) This section does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated.

Part 4 Heritage conservation

13 Objectives of Part

The objectives of this Part are as follows—

- (a) to conserve the environmental heritage of the Stage 1 Bays West Precinct, including the White Bay Power Station and heritage curtilage,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

14 Requirement for consent

- (1) Development consent is required for the following—
 - (a) demolishing or moving the following or altering the exterior of the following, including making changes to the detail, fabric, finish or appearance of a building—
 - (i) a heritage item,
 - (ii) an Aboriginal object,
 - (b) altering a heritage item that is a building by making—
 - (i) structural changes to its interior, or
 - (ii) changes to anything inside the item that is specified in Schedule 9 in relation to the item,
 - (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
 - (d) disturbing or excavating an Aboriginal place of heritage significance,
 - (e) erecting a building on land—
 - (i) on which a heritage item is located, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
 - (f) subdividing land—
 - (i) on which a heritage item is located, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.
- (2) However, development consent under this section is not required if—
 - (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development—

- (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site, and
 - (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or
- (b) the development is in a cemetery or burial ground and the proposed development—
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or
- (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
- (d) the development is exempt development.

15 Heritage conservation

- (1) Development consent must not be granted under this Part unless the consent authority—
 - (a) has considered a conservation management plan or heritage impact statement setting out an assessment of the matters listed in subsection (2), and
 - (b) is satisfied the development is compatible with the conservation of the heritage significance of the item.
- (2) In determining whether to grant development consent to the development, the consent authority must consider the following—
 - (a) the heritage significance of the heritage item,
 - (b) the impact the development will have on the heritage significance of the heritage item and its setting,
 - (c) the measures proposed to conserve the heritage significance of the heritage item and its setting,
 - (d) whether an archaeological site or potential archaeological site will be adversely affected by the development.
- (3) In determining whether to grant development consent to development on land identified in the Design Guide or a conservation management plan as a potential archaeological site, the consent authority may request a report on the likely impact of the development on archaeological material.

16 Demolition of heritage items

Development consent must not be granted to development resulting in the complete or substantial demolition of a heritage item unless the consent authority is satisfied—

- (a) the item, or the part of the item proposed to be demolished, does not have sufficient heritage significance to justify its retention, and
- (b) development achieving the following will be carried out on the site—
 - (i) the erection of buildings of a higher architectural and urban design quality than were exhibited by the heritage item before the

- demolition in consideration of the provisions of this Appendix and the Design Guide,
- (ii) a positive contribution to the streetscape,
- (iii) for a partial demolition—the adaptive re-use of the remaining part of the heritage item.

Part 5 Miscellaneous provisions

17 Design excellence

- (1) The objective of this section is to ensure development to which this section applies exhibits the highest standard of landscape, architectural and urban design as part of the built environment.
- (2) This section applies to—
 - (a) development involving—
 - (i) the construction of a new building, or
 - (ii) external alterations to, or the enlargement or extension of, an existing building, and
 - (b) development on land in Zone RE1 Public Recreation in Site D.
- (3) Development consent must not be granted for development to which this section applies unless the consent authority considers that the development exhibits design excellence.
- (4) In considering whether the development exhibits design excellence, the consent authority must consider the following matters—
 - (a) whether a high standard of architectural and landscape design, materials and detailing appropriate to the building type and location will be achieved,
 - (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,
 - (c) whether the development detrimentally impacts view corridors, including views of Sydney Harbour and views protected under the *White Bay Power Station Conservation Management Plan*, dated March 2013,
 - (d) how the development addresses the following matters—
 - (i) the suitability of the land for development,
 - (ii) existing and proposed uses and use mix,
 - (iii) heritage issues and streetscape constraints,
 - (iv) the relationship of the development with other existing or proposed development on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
 - (v) bulk, massing and modulation of buildings,
 - (vi) street frontage heights,
 - (vii) environmental impacts, including sustainable design, overshadowing, wind and reflectivity and visual and acoustic privacy,
 - (viii) the achievement of the principles of ecologically sustainable development,

- (ix) pedestrian, cycle, vehicular and service access, circulation and requirements, including the permeability of any pedestrian network,
 - (x) the impact on, and proposed improvements to, the public domain, including landscape design,
 - (xi) the relationship of the development with the street and building frontage,
 - (xii) the integration of landscape design with the surrounding area.
- (5) A building on land in Site B may exceed the floor space ratio shown for the land on the Floor Space Ratio Map by up to 10% if—
- (a) the building will result from development with a capital investment value of at least \$10 million, and
 - (b) an architectural design competition is held in relation to the development, and
 - (c) the consent authority is satisfied the building demonstrates design excellence as the winner of the architectural design competition.
- (6) In this section—
- architectural design competition*** means a competitive process conducted in accordance with the Design Guide.

18 Number of car and bicycle parking spaces for uses of land

- (1) The objectives of this section are as follows—
- (a) to minimise the use of private vehicles, and
 - (b) to encourage the use of public transport, walking and cycling as the dominant mode of transport.
- (2) Development consent must not be granted to development resulting in the number of car parking spaces provided in connection with a use of land exceeding the maximum specified in this section.
- (3) The maximum number of car parking spaces and visitor parking spaces is as follows—
- (a) for commercial premises other than retail premises—1 space per 1,100m² of gross floor area used for that purpose,
 - (b) for residential accommodation—
 - (i) 0 spaces per studio dwelling, and
 - (ii) 0.25 spaces per dwelling with 1 bedroom, and
 - (iii) 0.5 spaces per dwelling with 2 bedrooms, and
 - (iv) 0.5 space per dwelling with 3 or more bedrooms, and
 - (v) 0 visitor parking spaces,
 - (c) for serviced apartments—0 spaces.
- (4) The minimum number of bicycle parking spaces is as follows—
- (a) for commercial premises other than retail premises—
 - (i) 1 space per 100m² of gross floor area used for that purpose, and
 - (ii) 0.25 visitor parking spaces per 100m² of gross floor area used for that purpose,
 - (b) for retail premises—

- (i) 0.5 spaces per 100m² of gross floor area used for that purpose, and
 - (ii) 0.6 visitor parking spaces per 100m² of gross floor area used for that purpose,
 - (c) for residential accommodation—
 - (i) 1 space per studio dwelling, and
 - (ii) 1 space per dwelling with 1 bedroom, and
 - (iii) 2 spaces per dwelling with 2 or more bedrooms, and
 - (iv) 0.1 visitor parking spaces per dwelling,
 - (d) for serviced apartments—0.1 visitor parking spaces per dwelling.
- (5) If the total number of parking spaces is not a whole number, the total must be rounded down to the next whole number.

- (6) In this section—

car parking space means a space for the parking of motor vehicles that is ancillary to another land use, but does not include—

- (a) a place primarily used for—
 - (i) the washing of vehicles, or
 - (ii) the loading or unloading of goods, or
 - (iii) the storage of bicycles, or
- (b) a space for the exclusive use of vehicles belonging to a car share scheme.

car share scheme means a scheme in which a body corporate, an unincorporated body or a public authority—

- (a) owns or manages and maintains vehicles for shared or communal use, and
- (b) hires the vehicles exclusively to members of the scheme for occasional use for short periods of time, on demand and on a pay-as-you go basis.

visitor parking space means a bicycle parking space for use by visitors to, and not residents or other occupants of, a building.

19 Development below mean high water mark

- (1) The objective of this section is to ensure appropriate environmental assessment for development carried out on land covered by tidal waters.
- (2) Development consent is required to carry out development on land below the mean high water mark of a body of water subject to tidal influence, including the bed of the water.

20 Overshadowing of public places

Development consent must not be granted to development that results in a building causing overshadowing of a public place identified on the Solar Access to Public Open Space Map between 9am and 3pm on 21 June in any year as follows—

- (a) for land identified as “Area 1”—at least 4 hours of sunlight covering at least 90% of the land,
- (b) for land identified as “Area 2” or “Area 4”—at least 2 hours of sunlight covering 100% of the land,
- (c) for land identified as “Area 3”—at least 2 hours of sunlight covering at least 60% of the land.

21 End of journey floor space

- (1) This section applies to land in Site B and Site C.
- (2) A building used only for non-residential purposes is eligible for an amount of additional floor space (*end of journey floor space*) equal to the floor space occupied by the following facilities—
 - (a) showers,
 - (b) change rooms,
 - (c) lockers,
 - (d) bicycle storage areas.
- (3) The amount of end of journey floor space must not be more than the amount of floor space that can be achieved by applying a floor space ratio of 0.3:1 to the building.

22 Kiosks in Site D

The gross floor area of a kiosk on land in Site D must not exceed 30m².

23 Active street frontages

- (1) The objective of this section is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone E2 Commercial Centre and Zone MU1 Mixed Use.
- (2) This section applies to land identified as “Active street frontage” on the Active Street Frontages Map.
- (3) Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this section applies unless the consent authority is satisfied that, after the building’s erection or change of use, all premises facing the street on the ground floor of the building will—
 - (a) have an active street frontage, and
 - (b) be used for one or more of the following purposes—
Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Information and education facilities; Light industries; Medical centres; Mortuaries; Public administration buildings; Recreation facilities (indoor); Registered clubs; Veterinary hospitals
- (4) An active street frontage is not required for part of a building used for one or more of the following—
 - (a) entrances and lobbies, including as part of mixed use development,
 - (b) access for fire services,
 - (c) vehicular access.

24 Additional floor space for residential development

- (1) BASIX development forming part of residential development may exceed the floor space ratio shown for the land on the Floor Space Ratio Map by up to 5% if the consent authority is satisfied the building is—
 - (a) capable of—
 - (i) exceeding the applicable BASIX target for water by at least 7 points or equivalent, and
 - (ii) achieving a NatHERS rating of 7 stars or equivalent, and

- (iii) achieving a “platinum” certification under the *Livable Housing Design Guidelines*, published by Livable Housing Australia in 2017, and
 - (b) designed to incorporate appropriate mechanical ventilation measures, for example, exhaust with heat recovery, ducts and fans, to enable the circulation of heat-controlled and filtered fresh air.
- (2) In this section—
- BASIX development** has the same meaning as in the *Environmental Planning and Assessment Regulation 2021*.
- BASIX target** means a target for water or energy efficiency—
- (a) set by the Planning Secretary for the purposes of BASIX certificates issued under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, section 71, and
 - (b) in force on the commencement of this section.
- NatHERS** means the Nationwide House Energy Rating Scheme administered by the Commonwealth Government.

25 Additional floor space for non-residential development

- (1) A building involved in non-residential development may exceed the floor space ratio shown for the land on the Floor Space Ratio Map by up to 5% if the consent authority is satisfied the building is capable of achieving a 6 star NABERS energy rating.
 - (2) A building is capable of achieving a 6 star NABERS energy rating if there is a NABERS commitment agreement to achieve the rating without the use of GreenPower.
 - (3) In this section—
- GreenPower** means renewable energy provided by an electricity provider accredited under the National GreenPower Accreditation Program managed by the NSW Office of Energy and Climate Change on behalf of the National GreenPower Steering Group.
- NABERS energy rating** means a rating for the energy efficiency of a building under the National Australian Built Environment Rating System.
- non-residential development** means development, other than development for the purposes of residential accommodation, involving—
- (a) the construction of a new building, or
 - (b) if the development has a capital investment value of at least \$10 million—alterations to, or the enlargement or extension of, an existing building.

26 Development on land in Site A

- (1) Development consent must not be granted to development on land in Site A if the development will result in the gross floor area of all buildings on the land exceeding 18,000m².
- (2) In determining the gross floor area of all buildings on the land, the sum of the following must be excluded—
 - (a) the end of journey floor space within the meaning of section 21,
 - (b) the gross floor area of the part of a building intended to be used for passenger transport facilities.

27 Residential development on Site B

- (1) This section applies to land in Zone MU1 Mixed Use in Site B.
- (2) Development consent must not be granted to residential development on land to which this section applies unless the consent authority is satisfied the building resulting from the development incorporates appropriate measures intended to—
 - (a) reduce the level of external noise affecting residents inside the building, and
 - (b) improve the quality of air circulating through the building.

28 Development on land in Site C

Development consent must not be granted to development on land in Site C unless the consent authority is satisfied at least 50% of the gross floor area of a building resulting from, or involved in, the development will be used for one or more of the following purposes—

- (a) community facilities,
- (b) creative industries,
- (c) entertainment facilities,
- (d) food and drink premises.

[4] Schedule 4 Heritage items

Omit the matter relating to items 4 and 11 from Part 3.

[5] Schedule 9

Insert after Schedule 8—

Schedule 9 Heritage items

Appendix 8, section 2

| Suburb | Item name | Address | Property description | Significance |
|---------------|--------------------------|----------------|-----------------------------|---------------------|
| Rozelle | Sewerage pumping station | Roberts Street | Lot 2, DP 1277236 | Local |
| Rozelle | White Bay Power Station | | Lot 380, DP 1277236 | Local |

Schedule 2 Amendment of other environmental planning instruments

2.1 Inner West Local Environmental Plan 2022

[1] Clause 1.3 Land to which Plan applies

Insert after clause 1.3(1A)—

- (1B) This Plan, other than clause 6.33, does not apply to land to which *State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021*, Appendix 8 applies.

[2] Part 6 Additional local provisions

Insert after clause 6.32—

6.33 Affordable housing

- (1) This clause applies to development on land identified as “Stage 1 Bays West Precinct” on the Land Application Map involving—
- (a) the erection of a new building with a gross floor area of more than 200m², or
 - (b) alterations to an existing building resulting in the creation of more than 200m² of gross floor area intended to be used for residential accommodation, or
 - (c) the demolition of existing floor area and the subsequent creation, whether for the same or a different purpose, of more than 100m² of gross floor area.
- (2) Subclause (1) applies—
- (a) whether the floor area was in existence before, or is created after, the commencement of this clause, and
 - (b) whether or not the floor area replaces an existing area.
- (3) The consent authority may, when granting development consent to development to which this clause applies, impose a condition requiring an affordable housing levy contribution equivalent to 7.5% of the relevant floor area of the building.
- (4) A condition imposed under this clause must require a person to satisfy the contribution by way of a monetary contribution paid to the Council.
- (5) A monetary contribution must be calculated in accordance with the *Bays West Strategy Implementation—Affordable Housing Contribution Program* adopted by the Department on 9 December 2022.
- (6) The demolition of a building, or a change in the use of land, does not give rise to a claim for a refund of a contribution.
- (7) In this clause—
- relevant floor area**, of a building, means the gross floor area of the building used for residential purposes, excluding the floor area used—
- (a) to provide affordable housing or public housing, or
 - (b) used for community facilities, schools, public roads or public utility undertakings.

2.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Section 10.6 Relationship with other environmental planning instruments

Insert after section 10.6(5)—

- (6) *State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021*, Appendix 8 prevails over this Chapter to the extent of an inconsistency.