

Place, Design & Public Spaces

IRF20/827

Gateway determination report

LGA	Canada Bay
PPA	City of Canada Bay Council
NAME	Proposal for amendments to Canada Bay Local Environmental Plan 2013 to align with the Eastern Sydney District Plan and the Canada Bay Local Strategic Planning Statement (LSPS)
NUMBER	PP_2019_CANAD_001_00
LEP TO BE AMENDED	Canada Bay Local Environmental Plan 2013
ADDRESS	Canada Bay LGA
DESCRIPTION	Amendments to Canada Bay Local Environmental Plan 2013
RECEIVED	12 December 2019
FILE NO.	IRF20/827
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal (**Attachment A1**) seeks to amend *Canada Bay Local Environmental Plan 2013* (CBLEP) to align with the Eastern Sydney District Plan and implement the first stage of the Canada Bay Local Strategic Planning Statement (LSPS) (**Attachment A2**). The proposal also seeks to make various housekeeping amendments. The proposal seeks to undertake a series of amendments to the written provisions and maps.

The planning proposal seeks to achieve the following:

- Introduce a new clause into Part 6 Additional Local Provisions as Local Character Areas.
- Introduce a new clause into Part 6 Additional Local Provisions to increase diversity of apartment sizes.
- Introduce a new clause that requires new developments to provide affordable housing.
- Include minimum lot size '800 square metres' with a minimum street frontage of 20m for boarding houses in R2 zone.

- Introduce a new clause to address aircraft noise and to ameliorate the impacts of noise on affected residents and businesses.
- Protect and enhance bushland and biodiversity by:
 - changing the term 'terrestrial biodiversity' to 'environmentally sensitive' in SP2 Infrastructure Zone objectives and clause 6.3 Terrestrial Biodiversity;
 - expanding the area of land currently zoned E2 Environmental Conservation to include land that contains critical habitat (Endangered Ecological Communities); and
 - amend Environmentally Sensitive Land map to include land currently zoned E2 Environmental Conservation and land that contains critical habitat (Endangered Ecological Communities).
- Amend the objectives of the Height of Buildings (HOB) and Floor Space Ratio (FSR) planning controls.
- Rezone several Sydney Water sites from residential to SP2 Infrastructure.
- Correct various errors and anomalies.

1.2 Land description

The proposed amendments will apply to land within the Canada Bay local government area as shown in **Figure 1**.

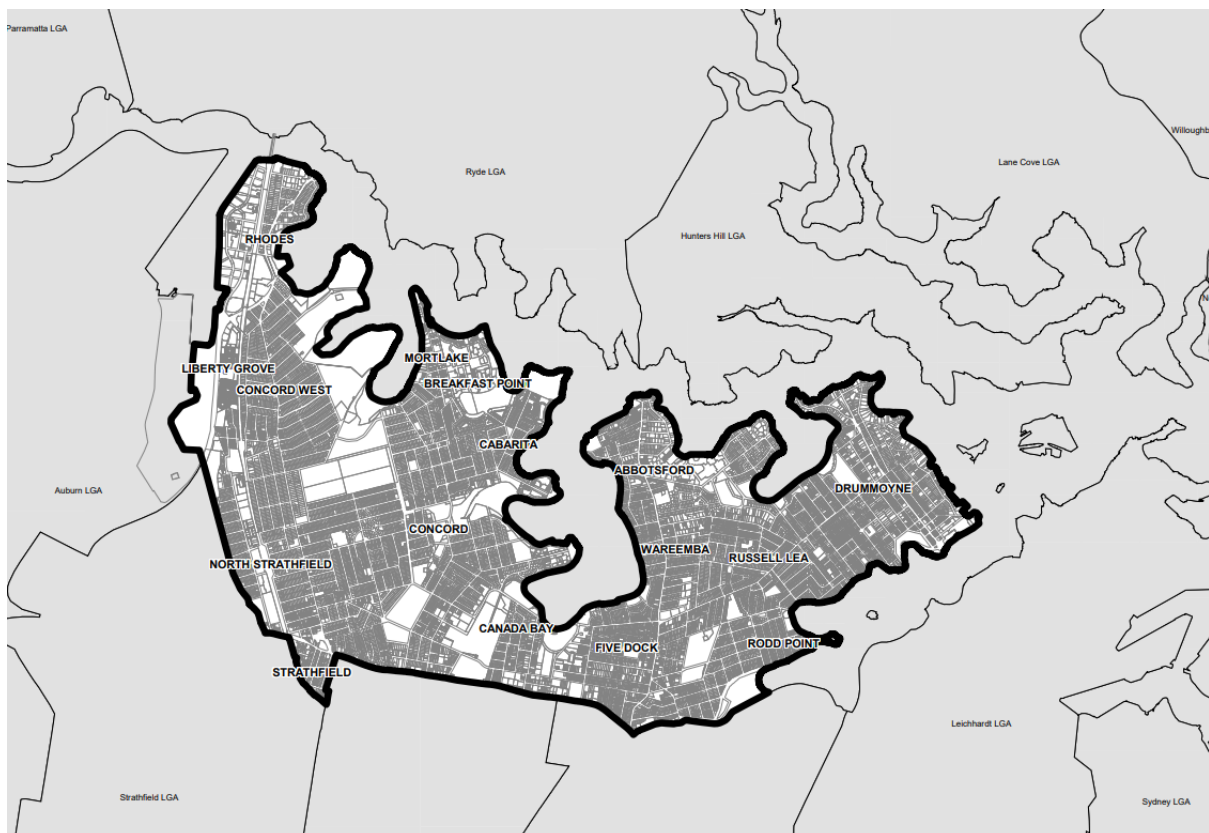


Figure 1: Land Application Map (Source: NSW Legislation)

1.3 Existing planning controls

The existing planning controls are those set out in the current Canada Bay LEP 2013. More details are provided later in this report where changes to existing planning controls are proposed.

1.4 Background

The amendment to the *Environmental Planning and Assessment Act 1979* (the Act) in March 2018 require all metropolitan councils to review and update their LEPs to be consistent with the directions of the relevant District Plan.

Canada Bay was identified as a priority council by the Greater Sydney Commission based on an assessment of housing supply and demand, planned infrastructure, opportunities for renewal and the need for more housing diversity in the area. The NSW State Government and Council entered into an agreement which included a \$2.5 million grant to fund an accelerated two year timeframe for Council to complete its LEP review.

Council states that this planning proposal to amend Canada Bay LEP 2013 is to commence the implementation of the Canada Bay LSPS, giving effect to the Eastern Sydney District Plan. Council intends to implement the LSPS as a series of planning proposals.

1.5 Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions which include:

- The scope of the planning proposal be reduced by removing the proposed local provision relating to Local Character Areas and the proposed exclusion of Local Character Areas from the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) as insufficient evidence base has been provided for Local Character Areas.
- Amendment prior to exhibition to provide a review of Council's rental lifting strategy in relation to the affordable housing component of the proposal.
- Provide justification for the proposed minimum lot size and frontage controls for boarding houses in the R2 zone.

Subject to the conditions of the Gateway, the planning proposal:

- is consistent with the Greater Sydney Region Plan and the Eastern Sydney District Plan;
- Will give effect to Council's Local Strategic Planning Statement (LSPS);
- is consistent with relevant section 9.1 Ministerial Directions and State Environmental Planning Policies; and
- will remove errors and anomalies from the Canada Bay LEP 2013.

Consultation with the community, land owners and adjoining land owners is required to consider the potential impacts of the proposed amendments. Conditions are proposed to assist with this process.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objectives of the planning proposal are to amend the Canada Bay LEP 2013 to:

- give effect to the Eastern City District Plan;
- commence the implementation of Canada Bay LSPS;
- make various housekeeping amendments to address a range of minor issues identified in the operation of the plan (refer to **Table 1, Appendix 2 and 3**).

The intended outcomes of the planning proposal are to:

- maintain and protect areas with recognised distinctive local character;
- increase housing choice and diversity;
- increase provision of affordable housing;
- ensure boarding houses are consistent with local character and provide adequate amenity;
- manage and mitigate aircraft noise impacts;
- protect land of high biodiversity value;
- Strengthen objectives for Height of Buildings and Floor Space Ratio controls;
- Ensure operational Sydney Water sites are zoned to reflect their operational purposes; and
- Correct errors and inconsistencies in the CBLEP 2013 to improve legibility and accuracy.

2.2 Explanation of provisions

The planning proposal seeks to amend the Canada Bay LEP 2013. The amendments are described as follows:

- instrument amendment;
- mapping amendment; or
- instrument and mapping amendments.

The planning proposal (**Attachment A1**) contains documentation of how Council has undertaken the LEP review process. It states the proposal is consequential to Council's LSPS which is supported by community consultation and a number of strategic studies.

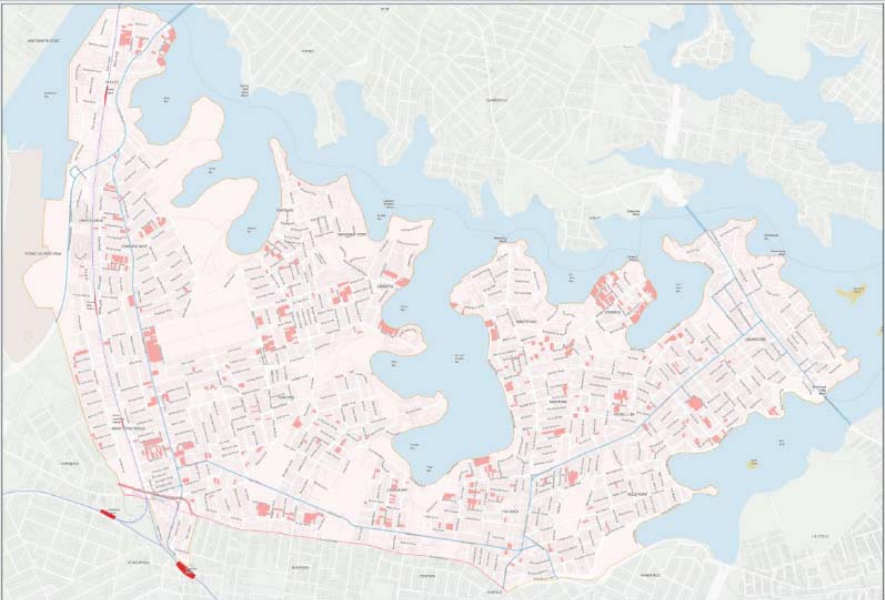
The following tables provide a description and outline of the proposed amendments under this planning proposal including amendments to the LEP maps, a summary of Council's justification for each of the proposed amendments and the Department's assessment of the proposed changes.

	<p>The Department has concerns that the information provided identifying local character areas is not sufficient to satisfy Part 2 – Character Assessment Toolkit in the <i>Local Character and Place Guideline</i> (the Guideline).</p> <p>The Department's Codes and Design team provided their comments below:</p> <ul style="list-style-type: none"> Consider a broader range of change categorisations <p>The Guideline identifies three categorisations which provide high-level indication as to the extent of change that an area can accommodate, including: change, enhance and maintain. The draft local character statement and interim character areas identify character areas for the 'maintain' categorisation. Council should consider, investigate and consult on the three categorisations and provide justification as to the categorisation of each character area.</p> Consider a broader range of character components <p>Local character encompasses social, environmental and economic components and features. The draft local character statements and interim character areas appear to predominantly consider housing character. Council should consider, investigate and consult on a broader range of character components (Figure 6. Character Wheel in the Guideline).</p> Consider lots affected and regulatory burden <p>Council should demonstrate:</p> <ul style="list-style-type: none"> How many lots (for houses, business, assets) will be captured by interim character areas, and Whether the addition of local character overlay on the site will increase the regulatory burden on the land owners/potential applicants. Undertake further community engagement and consultation <p>Targeted community engagement and consultation should be undertaken which builds on the feedback received from the Community Strategic Plan, Local Strategic Planning Statement and Local Housing Strategy to capture fine grain analysis of local character, and a broader range of character components and change categorisations.</p> Undertake further studies <p>The Department is concerned about the age of some of the studies used to inform the interim local character areas and draft local character statements. Council should undertake further studies to review and refine the interim local character areas and draft local character statements (in accordance with the Guideline). Copies of any relevant studies should be provided to the Department.</p> Amend the Local Character Statement <p>The proposed design controls and objectives must not be located in the draft Local Character Statement. This comment applies to any draft or final version of standalone local character statements prepared by Council. Council may wish to locate the design controls and objectives in the DCP, at their discretion.</p> Rename 'interim character areas' <p>'Interim character areas' must be renamed to 'investigation character areas' to better reflect that these areas are not finalised and are subject to further investigation, review and refinement.</p>
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	<p>The Department notes Council's intention to seek an exclusion from Part 3 and 3B of the SEPP (Exempt and Complying Development Codes) (Codes SEPP). It is noted that interim/investigation local character areas are not considered an acceptable mechanism to be excluded from the Code SEPP. Further, Council is to submit a separate request to the Department for any such exclusions to be considered.</p> <p>The proposed clause is not supported because Council has not provided sufficient information to demonstrate and meet the criteria of the Local Character Overlays identified in the Local Character Overlay discussion paper and the planning proposal is inconsistent with the Local Character and Place Guideline.</p> <p>Gateway conditions are recommended to require the planning proposal be amended to remove local character areas and exclusions from the Codes SEPP prior to the exhibition.</p>
2. Diversity of apartment sizes	
Proposed Amendment	<p>The proposal seeks to amend the CBLEP 2013 and introduce a new clause into Part 6 Additional Local Provisions to increase diversity and choices of apartment sizes. The proposal is in accordance with Action 5.4 of the LSPS. Council's proposed new clause is at Appendix 1.</p>
Council Comment	<p>Council identified that there is a need for provision of a wide range of apartment types to meet new demand for dwellings in the LGA (2026) in the Local Housing Strategy (Attachment A4) that is yet to be endorsed by the Department. The study also identified that 88% of new dwellings are likely to be apartments and 20% of these will be occupied by families with children.</p> <p>The proposal emphasises there is a need to provide more medium density opportunities by having both larger and smaller apartments in new developments.</p> <p>Council proposes that residential flat buildings, mixed use developments and shop top housing with 10 or more dwellings provide at least 20% of total number of dwellings as studio or one-bedroom dwellings, and 20% of total number of dwellings as 3 or more bedroom dwellings.</p>
Department Comment	<p>The Department notes that the proposed clause will ensure housing diversity and is strongly supported.</p> <p>The Department notes there are other councils LEPs with provisions aiming to achieve similar objectives and outcomes for new developments in their LGA. The following example provisions apply to residential flat buildings including shop top housing:</p> <ul style="list-style-type: none"> • The Hills LEP 2019 Clause 7.11 applies to land within Sydney Metro Northwest Urban Renewal Corridor to support increased housing around public transport. The intention is to ensure the provision of housing choice for different demographics, living needs and household budgets to accommodate a variety of family households. • Leichhardt LEP 2013 Clause 6.13 is to ensure the provision of a mix of dwelling types in residential flat buildings and mixed-use developments. The provision applies to residential flat buildings, including shop top housing with four or more dwellings. The development must provide at least 25% of the total number of dwellings (to the nearest whole number of dwellings) forming part of the development as self-contained studio dwellings or one bedroom dwellings, or both. Also, no more than 30% of the total number of dwellings forming part of the development will include dwellings with at least 3 bedrooms.

	<p>The Department notes that the clause may not be practical to apply across all proposals for residential apartments, depending on individual site constraints, building configuration and the need for efficient design (e.g. repeating floor plans across floors).</p> <p>It should be noted, that the proposed clause is a development standard subject to variation under clause 4.6 application by the developer.</p> <p>It is recommended that the planning proposal be updated to remove the specific clause and replace it with a plain English explanation.</p>
3. Affordable housing	
Proposed Amendment	<p>The proposal seeks to amend the CBLEP 2013 to include a new clause that will require new developments to provide affordable housing. The proposal also seeks to include new maps to identify land which the Affordable Housing Contributions clause will apply to.</p> <p>Council's proposed new clause is at Appendix 1.</p>
Council Comment	<p>Council prepared a draft Affordable Housing Contributions Scheme (AHCS) to support the statement of intent for the affordable housing policy (Attachment A5). The draft AHCS (Attachment A6) sets out how, where and at what rate development contributions will be collected for affordable housing. It also provides operational details including how to calculate contributions and in what form contributions are to be made.</p> <p>The proposal sets out that any development for residential purposes within urban renewal areas as identified below in Canada Bay LGA must contribute towards affordable housing based on the following rate (Attachment A7):</p> <ul style="list-style-type: none"> • Rhodes West Affordable Housing Contribution Area: 5% of the additional total Gross Floor Area (GFA) • Rhodes East Affordable Housing Contribution Area: 5% of the total GFA • Parramatta Road Corridor <ul style="list-style-type: none"> ○ Kings Bay Affordable Housing Contribution Area: 4% pf the total GFA; ○ Burwood Affordable Housing Contribution Area: 4% of the total GFA; ○ Homebush Affordable Housing Contribution Area; 4% of the total GFA. • 160 Burwood Road, Concord Affordable Housing Contribution Area: 5% of the total GFA <p>The above contributions can be a cash contribution or in the form of dwellings given to Council in perpetuity.</p> <p>The planning proposal is in accordance with Actions 2.1, 5.1 and 5.5 of the LSPS.</p>
Department Comment	<p>The Department's Affordable Housing Contribution Scheme Guideline supports requiring affordable housing through conditions of consent where an uplift of land value has been created. Council's planning proposal is consistent with this approach.</p> <p>The planning proposal proposes a range of contribution rates which have been assessed as viable (Attachment A7). This is consistent with the Guideline as it states that viability needs to be determined across areas because a flat contribution rate may not ensure viability.</p> <p>Council also used the preferred method in its analysis which is the residual land value method for determining viable contributions (anticipated return from development minus all costs) as referred in the Guideline.</p>

	<p>The proposed affordable housing contribution rates (4%-5%) are within or below the rate envisaged by the GSC and are considered conservative.</p> <p>It is noted that Council's Affordable Housing Policy (adopted 7 August 2007, Attachment A5) contains reference to the National Rental Affordability Scheme (NRAS). NRAS tenant income eligibility criteria and rent setting mechanisms (which indicates 75% of market rent) were not devised to be applied to properties delivered under affordable housing contribution schemes operating under SEPP 70. Affordable housing rent setting policy for SEPP 70 schemes should ensure tenants pay no more than 30% of household income in rent and that applicants are not selected on their ability to pay.</p> <p>Council's Affordable Housing Policy includes provision for a 'rental lifting strategy' that may undermine the intent of SEPP 70 by targeting moderate income renters at the expense of low and very low income households. Principle 2 in Schedule 2 of SEPP states:</p> <p style="padding-left: 40px;"><i>Affordable housing is to be created and managed so that a socially diverse residential population representative of all income groups is developed and maintained in a locality.</i></p> <p>The Department recommends that Council review its policy or prepare a policy that has regard to the principles in Schedule 2 of SEPP and is specific to its affordable housing contribution scheme.</p> <p>The Department identified that a feasibility study is required for Rhodes Station Gateway West Character area and is currently undertaking that feasibility study as part of the precinct planning for the area.</p> <p>A Gateway condition requires that the planning proposal is amended to exclude Rhodes West from the draft Affordable Housing Contributions Scheme prior to the exhibition.</p> <p>The Department's feasibility work on Rhodes West can inform Council's affordable housing scheme and allow Rhodes West either to be included in Council's scheme or the Department's scheme for Rhodes East and West following public exhibition.</p> <p>It is recommended that the planning proposal be updated to remove the specific affordable housing clause and replace it with a plain English explanation.</p>
4. Minimum lot size for boarding houses	
Proposed Amendment	<p>The proposal seeks to introduce a minimum lot size of 800sqm and with a minimum street frontage of 20m for new boarding houses in R2 Low Density Residential Zone.</p> <p>Council's proposed new clause is at Appendix 1.</p>
Council Comment	<p>Council states that a recent report by the City Futures Research Centre for SSROC (June 2019) found that the SEPP (Affordable Rental Housing) 2009 (ARHSEPP) is not facilitating boarding houses that are affordable housing under the definition in the SEPP. It is instead facilitating fast-tracked 'micro-apartments' for students and younger workers who would normally occupy mainstream studio apartments.</p> <p>Boarding houses are currently permissible in R1-R4 zones and B1, B2 and B4 zones under the ARHSEPP, with the additional requirement that boarding houses in R2 zone must be within an accessible area.</p> <p>In the past, there has been a limited number of boarding house developments in the R2 zone. However, there has been a significant</p>

	<p>increase in the number of boarding houses (micro-apartments) in the R3 zone that are out of character with the medium density area.</p> <p>The proposal aims to minimise boarding houses in low density areas to avoid the problem that Council experienced in the medium density areas. Given the limited amount of boarding house development in the R2 Low Density Residential zone, the proposed 800sqm would not have a significant impact on the provision of this type of development.</p> <p>The minimum lot size of 800sqm was a recommendation of a Low Rise Medium Density Study and Review that Council commissioned. The 20m frontage was a recommendation of Council's Local Planning Panel.</p> <p>In response to the LPP recommendation, Council staff provided justification to the Department based on their analysis of the Low Rise Medium Density Housing Code.</p> <p>The 800sqm minimum lot size would bring boarding houses into alignment with the minimum lot size for detached dual occupancies in the R2 zone and multi dwelling housing and residential flat buildings in the R3 zone.</p>  <p>Figure 3: Lots with 800 sqm or greater in R2 zone (source: planning proposal)</p>
Department Comment	<p>The Department supports Council's intention to ensure all housing occurs in a manner that is appropriate to the area, and that boarding houses be developed close to public transport and other public facilities.</p> <p>The Department notes that new boarding houses developed in the R2 Low Density Residential zone that are on lots less than 800sqm that interface with existing low rise dwellings could be out of character of the local area.</p> <p>The proposed minimum lot size for boarding houses is consistent with the minimum lot sizes for multi dwelling housing and residential flat building in R1 General Residential and R3 Medium Density Residential zones under clause 4.1A of the CBLEP 2013.</p> <p>Given the objectives in clause 4.1A primarily relate to density and design matters, it is recommended that the minimum lot size and street frontage controls only be applied to the construction of new boarding houses and not be applied to existing dwelling houses where a change of use is proposed.</p> <p>The proposed amendment is supported. However, it is recommended that prior to exhibition the planning proposal be updated to include the</p>

	justification for the minimum lot size and frontage controls and to remove the specific clause for minimum lot size for boarding houses and replace it with a plain English explanation.
5. Aircraft Noise	
Proposed Amendment	<p>The proposal seeks to amend the CBLP 2013 to introduce a new clause relating to development in areas affected by aircraft noise and assist in minimising impacts on residents and businesses from the aircraft noise.</p> <p>The proposal is in accordance with a Sydney Airport Draft Master Plan 2039 Acoustic Review (Attachment A8) and the revised Aircraft Noise Exposure Forecast (ANEF) 2039 map (Figure 4).</p>
Council Comment	<p>Council engaged a consultant in November 2018 to undertake an acoustic review of the Sydney Airport Draft Master Plan 2039 and revised ANEF Contour 2039.</p> <p>The recommendations of the review are to:</p> <ul style="list-style-type: none"> • amend the CBLP 2013 to include a new clause 'Development in areas subject aircraft noise'. The recommended clause is similar to Clause 6.8 Leichhardt LEP 2013, Clause 6.5 Marrickville LEP 2011, Clause 7.17 Sydney LEP 2012 and Clause 6.9 Botany Bay LEP 2013. • amend the Canada Bay DCP to include development controls in relation to Aircraft Noise to ensure compliance with AS2021-2015. <div data-bbox="507 949 1249 1917" data-label="Figure"> <p>The map displays the Sydney Airport area and surrounding urban regions. It features two main noise exposure forecast (ANEF) contours: a red line for the 2033 ANEF 20 and a yellow line for the 2039 ANEF 20. The map is overlaid with various land use zones, each represented by a different color. A legend on the right side of the map provides the key for these zones: LGA Boundary (black line), Sydney Airport 2033 ANEF 20 (red line), Sydney Airport 2039 ANEF 20 (yellow line), B1, Neighbourhood Centre (light blue), B2, Local Centre (blue), B4, Mixed Use (dark blue), E2, Environmental Conservation (orange), IN2, Light Industrial (purple), R1, General Residential (pink), R2, Low Density Residential (light red), R3, Medium Density Residential (red), RE1, Public Recreation (green), RE2, Private Recreation (light green), and SP2, Infrastructure (yellow). The map also shows major roads like Victoria Road and Lyons Road, and the surrounding water bodies.</p> </div> <p>Figure 4: ANEF 2039 map (source: planning proposal)</p>

Department Comment	<p>The Department notes Council's intention to protect and minimise the impact for residents and businesses from the aircraft noise on affected areas.</p> <p>The proposed amendment is supported.</p> <p>It is recommended that the planning proposal be updated to remove the specific clause and replace it with a plain English explanation.</p>
6. Environmentally Sensitive Land	
Proposed Amendment	<p>The proposal seeks to amend the CBLEP 2013 to protect and enhance bushland and biodiversity, including iconic species and priority corridors.</p> <p>The proposal seeks to:</p> <ul style="list-style-type: none"> • Replace the term 'terrestrial biodiversity' with 'environmentally sensitive' in objectives of Zone SP2 Infrastructure and clause 6.3 Terrestrial Biodiversity; • Expand the area of land currently zoned E2 Environmental Conservation to include land that contains critical habitat (Endangered Ecological Communities) <p>The proposal is in accordance with Actions 13.3 and 14.2 of the LSPS.</p>
Council Comment	<p>Council has completed a Biodiversity Strategy as part of meeting priorities and actions set in the LSPS. The Biodiversity Framework 2019 (Attachment A9) was developed to guide biodiversity conservation outcomes for the LGA and provide an evidence-based justification for revising Council's land use planning controls to protect and enhance environmentally sensitive land (ESL) and corridors. The framework identifies threatened and migratory species, and critical, significant and supporting habitats. These are set out into habitat management priorities and actions.</p> <p>The framework recommends Council's LEP provisions and maps be amended to include critical habitats (Endangered Ecological Communities), wetlands and priority areas in land zone E2 or identified as Terrestrial Biodiversity:</p> <ul style="list-style-type: none"> • Existing E2 Environmental Conservation zoned land and ESL land is not proposed to be amended. • Proposed zoning of land to E2 is limited to only Council or Crown land that contains critical habitat (Endangered Ecological Communities). • The conservative approach to rezoning of land to E2 is off-set by a more generous approach to identifying new ESL, which includes Council, Crown and private land that contains critical habitat (Endangered Ecological Communities) plus a buffer zone of approximately 25m width.
Department Comment	<p>Council's Biodiversity Framework 2019 identifies a number of threatened and migratory species, and critical, significant and supporting habitats. These are incorporated into habitat management priorities and actions and by amending the current LEP clause Council will be able to provide better protection and enhancement of environmentally sensitive land with biodiversity values and critical habitats.</p> <p>The proposal to amend the clause is supported.</p> <p>It is recommended that the planning proposal be updated to remove the specific environmentally sensitive land clause and replace it with a plain English explanation.</p>

7. Objectives for Height of Buildings and Floor Space Ratio controls				
Proposed Amendment	The proposal seeks to amend the CBLEP 2013 to amend the objectives of the Height of Buildings (HOB) and Floor Space Ratio (FSR) planning controls. The proposal aims to expand and strengthen the objectives to reduce ambiguity when assessing development applications and reduce the application of Clause 4.6 Exceptions to development standards of the LEP. Council's proposed new clause is at Appendix 1 .			
Council Comment	Council's seeks to strengthen the objectives of the development standard so that the outcomes of relevant DAs can be produced within shorter timeframes when Clause 4.6 of the Standard Instrument has been applied. Under Clause 4.6 the assessment of development applications that exceed the numerical standards relies on ensuring the objectives of the development standard are satisfied. The proposal states that the proposed new clauses are consistent with Council's LSPS and would not reduce the development potential in the LGA.			
Department Comment	Council's LEP currently includes objectives for HOB and FSR development controls. The intention of the proposed amendment is to strengthen the objectives to assist in improving consistency and transparency in Council's DA assessment process and reducing assessment timeframes. The proposed amendment is supported.			
8. Sydney Water Sites				
Proposed Amendment	The proposal seeks to amend the CBLEP 2013 to rezone several sites owned and operated by Sydney Water from residential to SP2 Infrastructure zone by amending the relevant zoning maps. The subject sites are as follows (refer to Appendix 2 for aerial photos and mapping changes):			
	Site	Lot & DP	Current Zoning	Proposed Zoning
	33 Harris Road, Five Dock	Lot 1, DP117782	R3	SP2
	89A Henley Marine Drive, Rodd Point	Lot 2, DP180962	R2	SP2
	1 Melrose Road, Abbotsford	Lot 25, DP270127	R3	SP2
	Teviot Avenue, Abbotsford	Lot 10, DP1241863	R3	SP2
	24W Westbourne Street, Drummoyne	Lot B, DP396119	R3	SP2
	32 Wymston Parade, Wareemba	Lot 96, DP 6743	R2	SP2
	Bortfield Drive, Chiswick	Lot 1, DP614437	R3	SP2
	Bortfield Drive, Chiswick	Lot 10, DP238796	R3	SP2
	8 Burns Crescent, Chiswick	Lot 11, DP1175282	R2	SP2
	33B Byrne Avenue, Russell Lea	Lot 101, DP774790	R2	SP2

	33B Byrne Avenue, Russell Lea	Lot 17, DP 8867	R2	SP2
	33B Byrne Avenue, Russell Lea	Lot 18, DP 8867	R2	SP2
	8A Durham Street, Concord	Lot 66, DP243992	R2	SP2
Council Comment	<p>Sydney Water recently reviewed their property portfolio and identified sites that contain permanent operational infrastructure that are currently zoned residential. Sydney Water approached Council seeking to rezone those identified land parcels from residential to SP2 Infrastructure.</p> <p>The proposal is intended to:</p> <ul style="list-style-type: none">• Better reflect the permanent and ongoing need for the land and existing assets to provide vital water and sewerage infrastructure• Provide clarity to the local community about the current and intended use of the land• Be consistent with Canada Bay LEP 2013 SP2 Infrastructure zone objectives to provide for infrastructure and related uses.• Confirm the land use is intended to support population growth within the LGA, providing services and infrastructure to meet peoples changing needs. <p>The site details and proposed mapping changes are referred to Appendix 2.</p>			
Department Comment	<p>The Department notes Council and Sydney Water’s intention is to recognise and protect the value of infrastructure assets and meet the objectives of SP2 Infrastructure zone.</p> <p>The proposed amendment is supported.</p>			
9. Other housekeeping Amendments				
Proposed Amendment	<p>The planning proposal seeks to amend the CBLEP 2013 to correct various errors and anomalies identified during operation of the plan in recent years.</p> <p>The contents of the housekeeping amendments are outlined in Appendix 3. It will provide description of each element, current planning controls, proposed amendments to clauses and any amendments to the LEP maps.</p>			
Department Comment	<p>The proposed amendment will correct errors and inconsistencies in CBLEP 2013 to improve legibility and accuracy. The proposed amendments are supported.</p>			

2.3 Mapping

The planning proposal states that the new and updated maps will be provided to support the proposed amendment to the LEP. The planning proposal anticipates the following maps will be prepared:

- Local Character Areas Map
- Affordable Housing Contribution Scheme Map
- Environmentally Sensitive Land Map
- Land Zoning Map
- Height of Buildings Map
- Floor Space Ratio Map
- Heritage Map
- Biodiversity Map (supporting map).

The draft maps submitted with the planning proposal have been checked by the Department's GIS team and planning officers and are considered appropriate and satisfactory for public exhibition. It is noted however, that the Local Character Areas Map is to be removed from the planning proposal prior to exhibition as required under the Gateway conditions.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal responds to the statutory requirement for councils to review and update their LEPs to give effect to the relevant District Plan and it is supported by a range of strategic studies including Council's Local Housing Strategy and Biodiversity Strategy.

The planning proposal is considered the best and most appropriate means of achieving Council's intended outcomes.

The City of Canada Bay Council was provided funding from the NSW Government to accelerate the review and updating of its LEP.

4. STRATEGIC ASSESSMENT

4.1 District

The Greater Sydney Commission released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets. The planning proposal is considered generally consistent with the priorities for infrastructure and collaboration, liveability, productivity and sustainability in the District plan. The planning priorities of particular relevance to the planning proposal are discussed below:

Planning Priority E1 – Planning for a city supported by infrastructure

This Planning Priority aims to align infrastructure with future growth. The planning proposal seeks to amend the zoning of several Sydney Water lands from residential to SP2 Infrastructure. This is to reflect the ongoing need for the land and existing assets to provide vital water and sewerage infrastructure and ensure the intended land use supports population growth within the LGA.

The planning proposal is consistent with this planning priority.

Planning Priority E5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport

The Planning Priority aims to provide greater housing supply, diversity and affordability with access to jobs, services and public transport.

It is noted that Council's Local Strategic Planning Statement (LSPS) was assured by the Greater Sydney Commission on 25 March 2020. The planning proposal was prepared in accordance with the LSPS and indicates Council's intention for the following:

- Provision of minimum lot sizes for boarding houses in R2 zone.
- Promote diversity of apartment sizes in accordance with LSPS Action 5.4.
- Provision for affordable housing with new developments in accordance with LSPS Actions 2.1, 5.1 and 5.5.

Housing will continue to be provided in areas close to jobs and services such as Rhodes and Sydney Metro West corridor. The planning proposal intends to ensure housing affordability is adequately provided with urban developments.

The proposal is also supported by Council's Local Housing Strategy (LHS) (**Attachment D**) which outlines opportunities and locations for the provision of additional housing, typology and choices.

Planning Priority E14 – Protecting and improving the health and enjoyment of Sydney Harbour and the District's waterways

The Planning Priority aims to protect environmentally sensitive waterways and areas where they play integral role in creating a sense of place, providing recreational opportunities and supporting economic and cultural activities.

The planning proposal aims to protect land that has been identified as having high biodiversity values which is in accordance with LSPS Action 14.2.

Planning Priority E15 – Protecting and enhancing bushland and biodiversity

The Planning Priority aims to protect bushland areas and remnant vegetation to support and preserve the District's significant biodiversity and scenic landscape.

The planning proposal is supported by Council's Biodiversity Strategy which was developed to guide biodiversity conservation outcomes for Canada Bay LGA and guide Council's land use planning controls to protect and enhance environmentally sensitive land and corridors.

4.2 Local

Community Strategic Plan 'Your Future 2030'

Council states that the proposed amendments are consistent with Council's Community Strategic Plan, Your Future 2030.

The CSP identifies directions including developing a balanced housing mix, ensuring high quality housing and renewal, encouraging sustainable housing and design and considering impact on the character of local areas.

The proposal is considered consistent as it seeks to improve the quality of information contained in the CBLEP 2013 and aims to achieve a balanced housing strategy that seeks to protect open spaces, vegetation and the views and access into the various bays around the LGA.

City of Canada Bay Local Strategic Planning Statement (LSPS)

The proposal is generally consistent with the City of Canada Bay LSPS which was endorsed by Council on 3 December 2019. The LSPS was assured by the GSC on 25 March 2020. The document provides a 'line of sight' between the District Plan and the LEP and contains a number of initiatives to implement the District Plan at the local level. This planning proposal is one of the mechanisms to implement the LSPS. Section 2.2 of this report (Explanation of provisions) identifies where proposed amendments implement specific actions of the LSPS.

Canada Bay Local Housing Strategy 2019

The Local Housing Strategy (LHS) quantitatively establishes that the residential uplift in the Rhodes and PRCUTS precincts will provide sufficient housing to meet the forecast population increase. The LHS also proposes housing diversity investigation areas to provide qualitative housing choices and affordable housing provisions to improve affordability. The LHS proposes that character areas be protected to offset this uplift as set out in Action 6 of the LHS as follows:

Character areas be identified and protected, with sensitive infill development, as part of retaining a diversity of housing types and also residential neighbourhoods.

Although the planning proposal is consistent with the LHS, it is recommended that the component relating to the Local Character Areas be removed from the current planning proposal due to policy uncertainty and insufficient evidence. Council may seek to address issues raised and refine the proposed Local Character Areas for inclusion in a future planning proposal.

4.4 Section 9.1 Ministerial Directions

Subject to the recommended Gateway conditions, the proposal is consistent with applicable s9.1 directions as discussed below.

Direction 2.1 Environment Protection Zones

The direction applies to all planning proposals and aims to protect and conserve environmentally sensitive areas.

The proposal seeks to amend the LEP to protect and enhance bushland and biodiversity by expanding the area of currently zoned E2 Environmental Conservation to include land that contains critical habitat (Endangered Ecological Communities). The planning proposal is consistent with this direction.

Direction 2.6 Remediation of Contaminated Land

The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered.

This direction has replaced the former clause 6 of State Environmental Planning Policy No. 55 Remediation of Land and was issued since Council submitted its planning proposal for a Gateway determination. Council considered consistency with SEPP 55 in its planning proposal and stated that SEPP 55 is not applicable to the proposed amendments. Given Direction 2.6 requires that a planning authority appropriately considers contamination and remediation at any time before the planning proposal is finalised, and not necessarily at the Gateway assessment

stage, Council will need to update the planning proposal to demonstrate consistency with this Direction prior to submission to the Department to finalise.

Direction 3.1 – Residential Zones

Direction 3.1 aims to encourage a variety and choice of housing types, make efficient use of infrastructure and services, and minimise the impact of residential development on the environment and resource lands. This direction applies where a planning proposal will affect residential land.

The planning proposal seeks to ensure that new developments provide affordable housing. It also seeks developments in the proposed Local Character Areas respond sympathetically to the established urban form and characteristics of the Precinct, without restricting or limiting the development of alternative new housing types that are compatible.

Subject to the removal of the proposed Local Character Area provisions (including the proposed exclusion of Local Character Areas from the Codes SEPP) the planning proposal is consistent with this direction.

4.5 State environmental planning policies (SEPPs)

The planning proposal as submitted is inconsistent with the following SEPP:

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)

On 6 April 2018, the Low Rise Medium Density Housing Code was published and came into effect on 6 July 2018 for councils where a deferral to the Code was not provided.

The Code aims to provide greater housing choice and facilitate faster housing approvals for medium density housing. It allows one and two storey dual occupancies, manor houses and multi dwelling housing (terraces) to be developed in accordance with a complying development certificate provided the development fully meets the requirements of the code.

The code will additionally permit dual occupancies and multi dwelling housing in zones where multi dwelling housing is currently permitted under a council's LEP. The planning proposal intends to introduce provisions for local character areas to protect areas with unique character where mainly low to medium density residential developments exist as explained in section 2.2 of this report. The planning proposal is inconsistent with this SEPP as insufficient justification has been provided to seek an exclusion from the SEPP. The policy framework to implement an exclusion from the SEPP based on Local Character Areas has not been finalised.

Subject to the removal of the proposed Local Character Area provisions (including the proposed exclusion of Local Character Areas from the Codes SEPP) the planning proposal is consistent with the Codes SEPP.

The planning proposal is generally consistent with all other relevant SEPPs.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The comprehensive review of the local environmental plan will benefit the community by providing improved clarity, accuracy and consistency of planning controls. The

inclusion of environmentally sensitive land will improve and enhance the quality of areas which will add value to the life of the community.

5.2 Environmental

The planning proposal is unlikely to result in any significant detrimental environmental impacts.

The proposed clause on 'environmentally sensitive land' will provide extra protection on bushland and biodiversity including critical habitats (Endangered Ecological Communities) and deliver improved environmental outcomes in the built environment.

5.3 Economic

The proposed amendment would result in a consistent planning framework across the LGA. The affordable housing provision will provide greater certainty of delivering affordable housing with new urban developments in the LGA.

The amendments to the instrument are unlikely to result in any significant detrimental economic impacts.

5.4 Infrastructure

The proposed amendment to rezone some sites owned by Sydney Water from residential to SP2 Infrastructure will provide clarity to the local community about the current and intended use of the land. The proposal's intent is to provide services and infrastructure to support growing population within the LGA.

The amendment to the instrument is unlikely to result in altering the infrastructure requirements or cause any significant detrimental impact on existing infrastructure within the LGA.

6. CONSULTATION

6.1 Community

Council states that proposal will be publicly exhibited for a minimum of 28 days in accordance with 'A Guide to Preparing Local Environmental Plans'.

A 28-day exhibition period is considered appropriate and no objection is raised regarding the proposed exhibition methods.

6.2 Agencies

Council intends to consult with following public agencies in respect of the planning proposal:

- Greater Sydney Commission
- Department of Premier and Cabinet – NSW Heritage
- NSW Office of Water
- Sydney Water Corporation
- Sydney Metro

An additional Gateway condition requires consultation with the following agencies during public consultation:

- Sydney Airport

- Environmental Protection Authority
- Transport for NSW
- Strathfield Council
- Burwood Council
- Cumberland City Council
- City of Ryde

7. TIME FRAME

Council has provided a project timeline that anticipates a 6-month timeframe for completion following receipt of a Gateway determination. In order to adhere to the priority funding arrangements, Council is required to submit the planning proposal to the Department for finalisation eight weeks prior to finalisation of the planning proposal.

8. LOCAL PLAN-MAKING AUTHORITY

Council has not indicated that it would like to exercise its functions as a Local Plan-Making authority. As the planning proposal is to give effect to the Eastern City District Plan and the City of Canada Bay is an accelerated Council under the LEP Review Funding Program, it is considered that in this case, Council should not be the Local Plan-Making authority.

9. CONCLUSION

The planning proposal has strategic merit as it responds to the EP&A Act 1979 which requires all metropolitan councils to review and amend their LEPs to give effect to District Plans. It is considered that this proposal gives effect to the Eastern District Plan and the LSPS. There are no site-specific concerns which would warrant the proposal not going ahead. The proposal will bring about planning clarity for the Council and the community of the City of Canada Bay.

It is recommended that the planning proposal is supported to proceed with conditions.

10. RECOMMENDATION

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to exhibition, the planning proposal is to be amended to:
 - (a) Delete the proposed amendment relating to Local Character Areas due to insufficient information to satisfy Part 2 – Character Assessment Toolkit in the Local Character and Place Guideline and in the absence of policy certainty regarding local character overlays in the Standard Instrument Local Environmental Plan. This amendment to the planning proposal includes deleting the reference to the proposed exclusion of Local Character Areas from Part 3 and 3B of the SEPP (Exempt and Complying Development Codes) 2008.

- (b) In relation to the proposed affordable housing provisions:
 - i. include a review of Council's rental lifting strategy in relation to the principles in Schedule 2 of State Environmental Planning Policy 70 – Affordable Housing (Revised Schemes); and
 - ii. exclude Rhodes West from the draft Affordable Housing Contributions Scheme
- (c) In relation to the proposed minimum lot size and street frontage controls for boarding houses in R2 Low Density Residential zone:
 - i. Provide that the proposed minimum lot size and street frontage controls for boarding houses apply only to newly constructed boarding houses and not to change of use proposals to convert existing dwelling houses to boarding houses
 - ii. Include the justification for the minimum lot size and frontage controls for boarding houses in R2 zone
- (d) Due to the potential complexity in their drafting, the planning proposal is to be amended to remove the following specific clauses and replace with plain English explanations for the purpose of community consultation:
 - i. Diversity of apartment sizes
 - ii. Affordable housing
 - iii. Minimum lot size for boarding houses
 - iv. Aircraft noise
 - v. Environmentally sensitive land.

For the purpose of this condition, plain English is taken to mean an explanation of the objectives of the clause, but no exact phrases or numbering. The planning proposal is to be amended to indicate that the controls are in draft form and may change at finalisation stage.

2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
3. Consultation is required with the following public authorities:
 - Sydney Metro Greater Sydney Commission
 - Office of Environment and Heritage
 - NSW Environment Protection Authority
 - NSW Office of Water
 - Sydney Water

- Sydney Metro
 - Sydney Airport Corporation
 - Transport for NSW – Roads and Maritime
 - Strathfield Council
 - Burwood Council
 - Cumberland City Council
 - City of Ryde
4. The time frame for completing the LEP is to be 6 months from the date of the Gateway determination.
 5. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.



15 April 2020
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