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Plan finalisation report – PP-2020-211

Inner West Local Environmental Plan 2022

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1 Introduction

1.1 Overview

1.1.1 Inner West Local Environmental Plan 2022 (Inner West LEP)

In March 2018, amendments were undertaken to the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) to require all metropolitan councils to review and amend their Local Environmental Plans (LEP) and give effect to the relevant District Plan. Inner West was identified as a priority council by the then Greater Sydney Commission (now Greater Cities Commission) based on assessment of housing supply and demand, planned infrastructure, opportunities for renewal and the need for more housing diversity in the area. A timeline of two years was provided for Inner West to complete its LEP review. Council met this timeline by submitting its draft LEP to the Department for finalisation on 30 June 2020.

The planning proposal is Council's first stage in its LEP review, which consolidates the following existing LEPs applying to the local government area (LGA):

- Ashfield LEP 2013;
- Leichhardt LEP 2013; and
- Marrickville LEP 2011.

Council advised the new Inner West LEP is not a comprehensive review of all planning controls, but a consolidation, harmonisation and alignment of the three principal LEPs applicable across the LGA. Consequently, future stage(s) to update the consolidated LEP will include a comprehensive review of planning controls across the LGA as informed by state strategies, local evidence-based strategies, plans and the Inner West Local Strategic Planning Statement.

1.1.2 Site description

The planning proposal applies to all land within the Inner West LGA, with the exception of the following properties, as identified in **Figure 1**:

- Callan Park – this land is subject to the provisions of Callan Park (Special Provisions) Act 2002 No. 139;
- the Bays Precinct – this land is subject to the provisions of Sydney Regional Environmental Plan No 26 (City West); and
- Land identified as “Deferred matter” – this refers to land known as the Balmain Tigers site where Leichhardt Local Environmental Plan 2000 continues to apply.

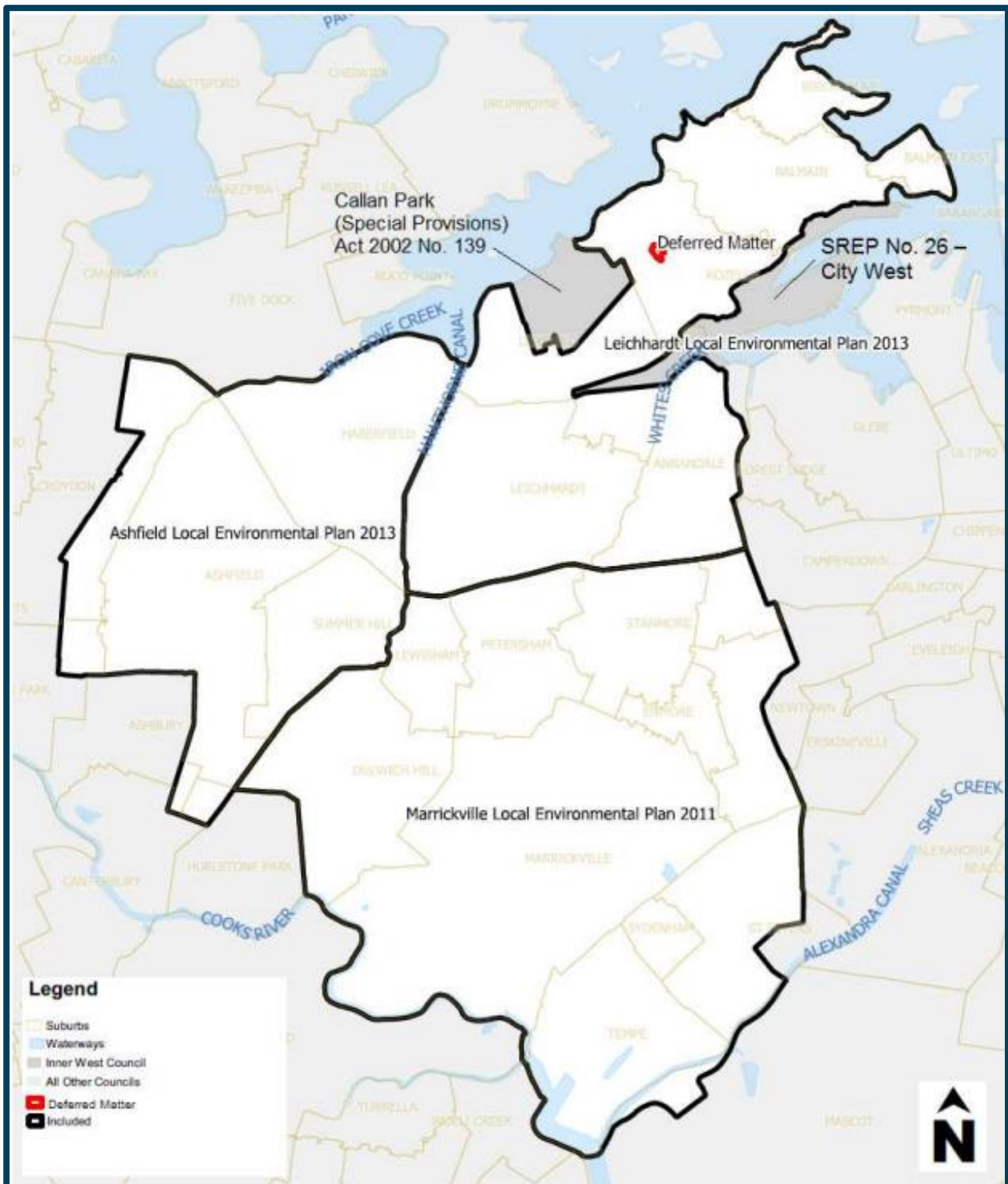


Figure 1 Application of the Inner West LEP 2022

1.1.3 Purpose of plan

The planning proposal (**Attachment A**) seeks to consolidate and translate most of the existing planning controls for the three former council areas within the amalgamated Inner West LGA into a consolidated plan. Council's stated objectives are to:

- consolidate land use tables, to provide a single land use table for each zone;
- retain existing development standards, including floor space ratio, height of buildings, and minimum lot size;
- provide one set of aims and rationalise controls;
- in cases where simple consolidation cannot be undertaken, retain former LEP provisions based on an area map;
- remove redundant controls and inconsistencies;
- provide a framework for the future comprehensive LEP;
- provide a consistent approach to zone objectives and application across the local government area; and
- ensure consistency in permissible land uses across similarly zoned lands within the former Ashfield, Leichhardt and Marrickville LGAs.

The Gateway assessment report notes additional changes to development standards, land use permissibility and other provisions also form part of the planning proposal. The areas of major change are identified as the:

- rezoning of land in Ashfield Town Centre from B4 Mixed Use to B2 Local Centre;
- restricting residential uses in the B7 Business Park zone to dwelling houses and residential flat buildings through the application of a local provision and changes to the land use table;
- restricting business and office uses in the IN2 Light Industrial and B7 Business Park zones through application of a local provision and changes to the land use table;
- prohibiting dual occupancies in all zones, consistent with Marrickville LEP 2011; and
- addition of light industries and industrial retail outlets in business zones.

The Department assessed and considered these changes and determined them to be satisfactory.

In applying the objectives of the planning proposal, Council applied the following key principles to guide decisions:

Table 1 – Inner West Council's key principles that have guided the draft IWLEP development

Principle	Details
Principle 1 – Consistency with Standard Instrument	Ensure consistency with the Standard Instrument (Local Environmental Plans) Order 2006 (SI LEP).
Principle 2 – Zone retention	Retain the full set of land use zones, which are already identified in Ashfield Local Environmental Plan 2013, Leichhardt Local Environmental Plan 2013 and Marrickville Local Environmental Plan 2011. This principle is applied throughout.
Principle 3 – Alignment	Harmonise the aims, objectives, clauses and land use tables of Ashfield LEP 2013, Leichhardt LEP 2013 and Marrickville 2011.

Principle	Details
Principle 4 – Permissibility retention	Retain the permissibility of land uses within the respective zones, where the three LEPs are already consistent.
Principle 5 – Consistency with objectives and strategic directions	In cases where there is incompatibility between clauses or land uses between two or three existing LEPs, adopt those standards, provisions, or uses that are consistent with the intent and objectives of the zone; that are closest to best practice; and/or are in line with the Eastern City District Plan and the draft LSPS.
Principle 6 – Clarification	Clarify provisions which may be ambiguous, or which require minor amendment to clarify the intent of the clause.
Principle 7 – Removal of redundancy	Remove clauses that duplicate provisions of relevant State Environmental Planning Policies (SEPPs) or which have no relevance to the Inner West LGA.
Principle 8 – Consistency with SEPPs	Generally, permit land uses already permissible under State Environmental Planning Policies (SEPPs), with the exception of those land uses prohibited by one or more of Ashfield LEP 2013, Leichhardt LEP 2013 and Marrickville 2011, but permissible under former SEPP (Infrastructure) (now SEPP (Transport and Infrastructure) 2021), where it is considered that further investigation is required.
Principle 9 – Support sustainability outcomes	Support land uses that will improve sustainability outcomes in relation to energy, water and waste.
Principle 10 – Matters for future investigation	Identify matters that will require more detailed consideration in a future review.
Principle 11 – Conformity with Marrickville LEP 2011 Amendment 4 / Ashfield LEP 2013 Amendment 8	Ensure conformity with land use permissibility and local provisions already established by Marrickville LEP 2011 Amendment 4 and Ashfield LEP 2013 Amendment 8.

1.1.4 State electorate and local member

The LGA falls within the State electorates listed in Table 2.

Table 2 – State Electorates and State Members

Electorate	Member
Balmain	Jamie Parker
Newtown	Jenny Leong
Heffron	Ron Hoenig
Canterbury	Sophie Cotsis
Strathfield	Jodie McKay
Summer Hill	Jo Haylen

The following submissions were made by The Hon. Jamie Parker MP:

- Correspondence forwarded from a constituent raising issue with the rezoning of the Moore Street Industrial Precinct. This submission reflects largely the issues raised by the constituent in their separate submission made directly to Council.
- Correspondence to Council which notes he has been contacted by residents concerned with Council's explanation of the changes proposed, in particular to the Moore Street Industrial Precinct rezoning. The submission requested the deadline for feedback be extended by at least one week to Wednesday 22 April 2020.

Council's responses to these submissions adequately address the issues raised because:

- Council extended its submission deadline to 24 April 2020; and
- Council conducted additional community consultation about the proposed rezoning of the Moore Street Industrial Precinct in June (Refer to Section 3 for further detail).

Council did not receive submissions from any other State MPs.

The LGA falls within the Federal electorates listed in Table 3:

Table 3 – Federal Electorates and Federal Members

Electorate	Member
Sydney	Tanya Plibersek
Kingsford Smith	Matthew Thistlethwaite
Barton	Linda Burney
Watson	Tony Burke
Reid	Sally Sitou
Grayndler	Anthony Albanese

No submissions were made by Federal MPs.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 11 March 2020 determined the proposal should proceed subject to conditions. The Department is satisfied Council has complied with the requirements of the Gateway conditions.

Delegation was not provided to Council to make the plan due to its scale as a new principal LEP. For this reason, the Department is responsible for finalising the LEP.

3 Public exhibition

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 16 March 2020 to 24 April 2020.

Council received a total of 170 submissions during this period from individuals, organisations and government agencies. A submission was also made by Council's Resource Recovery Planning Manager.

At its meeting of 9 June 2020, Council resolved to conduct further consultation targeted towards the proposed rezoning of Council's Moore Street Industrial Precinct and proposed changes to the Summer Hill Flour Mill Complex. This additional consultation comprised:

- Adding video presentations to the project's *Your Say* webpage about the changes to the planning proposal in response to the community's concerns about rezoning Moore Street Industrial Precinct and amending the heritage listing of the Summer Hill Flour Mill;
- Adding a Questions and Answers page to the *Your Say* webpage, and establishing a Q&A email address and phone hotline; and
- An email to all submitters to alert them to the additional consultation and engagement opportunities.

A total of 37 public questions were asked on the Q&A page. Of these, over 80% came from only 3 households, with almost 50% from one person. Four phone enquiries were received and responded to.

Section 3.1 provides a summary of all submissions received during the public exhibition, including the additional consultation undertaken by Council.

3.1 Submissions during exhibition

The submissions received during public exhibition identified the following issues:

- proposed land use zoning amendments -
 - Moore Street industrial precinct – (101 submissions);
 - Ashfield Town Centre – (10 submissions);
- prohibition of permissible land uses -
 - residential flat buildings in Zone B2 Local Centre of former Leichhardt LGA – (3 submissions);
 - hotel and motel accommodation in Zone B5 Business Development – (4 submissions);
 - dual occupancies – (5 submissions);
- heritage -
 - recommended corrections listed items in Schedule 5, including administrative errors and inclusion of listings – (25 submissions)
 - adding 'including interiors' to the description of listings in the former Ashfield LGA – (4 submissions)
 - Haberfield Heritage Conservation Area – (3 submissions)
- implementing State and Local strategic planning policies and development controls -
 - delivering development controls to improve local housing supply – (20 submissions)
 - implementing Council policies, such as car parking provisions – (16 submissions)
- other -
 - providing additional provision for rezoning of select sites – (15 submissions); and

- community consultation – (20 submissions)

The discussion of these issues and Council's response is found in Table 4 over the page.

Table 4 - Summary of Key Issues

Issue raised	Council response
Proposed land use zoning amendments	
<p>Moore Street Industrial Precinct rezoning from IN2 Light Industrial to IN1 General Industrial</p> <p>Concerns were raised about:</p> <ul style="list-style-type: none"> • The perceived intensification of development and its associated impacts i.e. traffic generation; • The loss of the ability to develop uses permitted under the Leichhardt LEP's IN2 zone, including business premises and office premises for creative purposes, given the proposed Clause 6.15 would only apply to the IN2 and B7 zones; • Council not disclosing its financial interest in the land it owns within the precinct, which is pertinent given Council recently sought EOLs for operation of the Leichhardt Community Recycling Facility and Depot; & • Changes recommended by Council's draft Employment and Retail Lands Strategy, but this strategy not being completed and endorsed by Council yet. 	<p>In response, Council stated that proposed IN1 zoning:</p> <ul style="list-style-type: none"> • was intended to achieve consistency with the predominant existing industrial zone across the LEPs of the LGA where 'general industry' is permitted; • aligned the planning controls of the precinct with other industrial areas of the LGA; and • gave effect to the recommendations of Council's Employment and Retail Lands Strategy. <p>However, in response to community submissions, the planning proposal has been amended to:</p> <ul style="list-style-type: none"> • retain the existing IN2 Light Industrial zoning; and • include the following additional permitted uses to reflect existing uses: <ul style="list-style-type: none"> ○ Freight transport facilities; ○ General industries; ○ Resource recovery facilities; ○ Sewage treatment plants; ○ Timber yards; ○ Vehicle body repair workshops. <p>Additional consultation undertaken by Council officers because of Council's resolution on 9 June 2020, confirmed the approach of retaining the IN2 zone and including existing land uses as additional permitted uses were considered to be an improved outcome for the planning proposal.</p> <p>Council officers also prepared as an attachment to the post-exhibition report, a Statement of Council Interest stating the planning proposal was not prepared to facilitate any change to the use of the recycling facility.</p>
<p>Ashfield Town Centre rezoning from B4 Mixed Use to B2 Local Centre</p> <p>Concerns relating to the requirement of residential development to have ground level business uses will inhibit residential development</p>	<p>Council noted active primary street frontages are already required in the Ashfield Town Centre within the B4 Mixed Use zone. Council also notes the purpose of rezoning the Ashfield Town Centre is to reinforce its vision as a local centre in alignment with Council's Local Strategic Planning Statement, rather than promote residential development. A portion of the B4 Mixed Use zone will be retained in areas around the Ashfield Town Centre which will assist in facilitating further residential development.</p>

Issue raised	Council response
	Council's stage 2 review of the LEP will consider planning controls that contribute to the delivery of housing supply in the Inner West LGA.
Prohibition of permissible land uses	
<p>Residential flat buildings in Zone B2 Local Centre</p> <p>Submissions raised concern with prohibiting residential flat buildings in the B2 zone of the former Leichhardt LGA.</p>	Active street frontages (i.e. a non-residential use at ground level) are already required for the primary frontage of development for the purpose of residential accommodation under Clause 6.11A of Leichhardt LEP 2013.
<p>Hotel and motel accommodation in Zone B5 Business Development</p> <p>Submissions raised concerns with:</p> <ul style="list-style-type: none"> • Prohibition of hotel and motel accommodation in the B5 zone, specifically in Marrickville along Victoria Road; • The prohibition being justified by the incomplete and unendorsed Employment and Retail Lands Strategy; and • Council's incorrect exhibition and report documentation about the change. 	<p>Council's report acknowledged an error in the exhibited land use matrix incorrectly showing hotel and motel accommodation as prohibited in the existing B5 zone of Marrickville LEP 2011, since it is permitted.</p> <p>Council resolved at its meeting of 23 June 2020 to retain the permissibility of hotel and motel accommodation in the B5 zone.</p>
<p>Dual occupancies in Leichhardt LGA and Attached Dual occupancies in Ashfield LGA</p> <p>Submissions included the concern that prohibiting dual occupancies will reduce housing supply, diversity and affordability.</p>	<p>In response, Council considers that the changes to permissibility of dual occupancies will provide for appropriate streetscape, character and amenity. Further other forms of diverse housing continue to be permitted in these areas.</p> <p>Council also noted other submissions were received during the public exhibition supporting this approach.</p>
Heritage	
<p>Recommended corrections listed items in Schedule 5, including administrative errors and inclusion of listings</p> <p>Concerns were raised relating to the incorrect details and listing of properties in comparison to existing listings in Schedule 5</p>	<p>Council noted the relevant listings have been removed or altered to rectify the confirmed errors and where concerns require clarification, Council has identified each matter to be considered in its second stage of its LEP review. This second stage will involve seeking heritage advice, and if necessary, future change to Schedule 5.</p> <p>Council also noted the listing for 2-32 Smith Street (The Flour Mill) was amended to 2 lots at 16-18 Flour Mill Way, but it was decided that interiors should remain in the listing.</p>

Issue raised	Council response
<p>Adding 'including interiors' to the description of listings in the former Ashfield LGA</p> <p>Concerns were raised relating to Ashfield Council's original process of listing properties in Ashfield LEP 2013 and the lack of consultation with property owners about this issue.</p>	<p>Council suggested the addition of interiors to the listings achieves a consistent approach to heritage listings across the LGA. Council also noted interiors may be removed from the listings where it has been established that the interiors have no significance; and residents who raised this issue relating to their property in a submission will have the listing investigated in future heritage reviews.</p>
<p>Haberfield Heritage Conservation Area (HCA)</p> <p>Concerns were raised relating to:</p> <ul style="list-style-type: none"> • Permitting excavation of up to 3m below existing ground floor level continues to enable de facto second storey development, contrary to the objective of clause 6.5 Development on land in Haberfield Heritage Conservation Area of Ashfield LEP 2013; • The combined percentage of either a roof cavity development or an under-house conversion, but not a combination of both, should not exceed 25% of the original floor area of the house; • Prohibiting attached dual occupancies and the permissibility of secondary dwellings, given attached dual occupancies are more appropriate in Haberfield than detached secondary built forms; • Removal of the aim from Ashfield's B1 Zone to ensure new development has regard to the character and amenity of adjacent and nearby residential areas could adversely affect the significance of Haberfield HCA; & • Removal of the aim from Ashfield's Clause 4.1 Minimum Subdivision Lot Size to maintain the existing pattern of subdivision within heritage conservation areas in terms of lot size and lot dimensions could cause internal subdivisions of secondary dwellings, affecting the significance of Haberfield HCA. 	<p>Council outlined the following comments in relation to concerns raised during public exhibition:</p> <ul style="list-style-type: none"> • Council has amended the planning proposal to clarify the application of additional local clause 6.20 - Development on land in Haberfield HCA for the purpose of a dwelling house, including alterations and additions. This seeks to preserve the existing single storey and landscape character of the Haberfield HCA through development standards, including a 50% landscaped area requirement. • In relation to Point 2, Council does not seek to restrict additions to either below or above the ground floor as it would be contrary to the intent of the existing control, which seeks to retain the single storey appearance of dwellings; • Council cannot prohibit secondary dwellings in Zone R2 Low Density Residential because they are mandated by the Standard Instrument; • s4.15 of the Act prescribes matters which the consent authority must consider in determining a development application, including the environmental, economic and social impacts of development on the surrounding locality. The removal of the objective in Ashfield's B1 zone – <i>'To ensure that new development has regard to the character and amenity of adjacent and nearby residential areas'</i> ensures the drafting of the LEP does not duplicate provisions in other instruments or the Inner West LEP. This includes, the protection of the Haberfield HCA provided by clause 6.20 Development on land in Haberfield HCA, clause 5.10 – Heritage conservation and the provisions of the relevant DCP; and • the addition of an aim relating to HCAs in clause 4.1 Minimum Subdivision Lot Size would not be appropriate to standardise for HCAs across the Inner West LGA. Examples in Annandale and Balmain HCAs have demonstrated the subdivision of land can be successfully completed and preserve amenity and character, so long as it is consistent with

Issue raised	Council response
	<p>other numerical standards in the LEP or DCP. However, Council has retained the current minimum lot size of 500sqm across the Haberfield HCA. The retention of this control will supplement the need for an objective to be broadly applied across the LGA and ensure place specific controls are in effect to conserve the significance of the HCA. .</p>
Implementing State and Local strategic planning policies and development controls	
<p>Delivering development controls to improve local housing supply</p> <p>Concerns relating to insufficient new housing supply and typologies will be provided under the planning proposal and areas near new infrastructure should be intensified.</p>	<p>Council notes the current controls under the proposed Inner West LEP are sufficient to achieve its 5 year housing target in the Eastern City District Plan¹. Council also identified 'place based strategies' to achieve housing uplift has commenced, in line with the Local Strategic Planning Statement and Local Housing Strategy.</p> <p>As the purpose of this planning proposal is to harmonise planning controls across the three legacy LEPs, opportunities to increase development density have not been considered at this stage. Council suggested uplift may be proposed in the next stages of the LEP review which consider Council's strategic planning work once complete.</p>
<p>Implementing Council policies, such as car parking provisions</p> <p>Submissions suggested new planning policies and development controls, such as carparking or changes to development standards.</p>	<p>Council noted this planning proposal is focused on consolidation and harmonisation. Planning controls derived from Council policies and strategic planning work will be reviewed and updated in the LEP and DCP Phase 2 project.</p>
Other	
<p>Providing additional provision for rezoning of select sites</p> <p>Submissions recommended certain land in the LGA is rezoned to increase development uplift aligned with community aspirations.</p>	<p>Council noted the land identified by community members is either already subject to an existing planning proposal or strategic planning process. Council also suggested the potential for land rezoning and uplift will be reviewed and considered in the next stage of Council's LEP review.</p>
<p>Community consultation</p> <p>Submissions commented on the impact of Covid-19 on the consultation process, the inadequacy of the consultation material and the need for an extended exhibition period.</p>	<p>Council noted the public exhibition was extended beyond its requirements as specified under the Gateway determination, allowing for a submission deadline to 24 April 2020. Council also undertook additional community consultation about the planning proposal, including a Q&A webpage, email address and phone line as outlined at the start of this section.</p>

¹ Since Council's response, the Department's approval of the LHS found the LGA is missing its housing target by 1,385 dwellings or 23% of their target (which was 5,900 dwellings). The Department's approval required Council to undertake further strategic planning work to address this shortfall – see Section 5.1 of this report for further details.

The Department considers Council has satisfactorily addressed all matters raised in public submissions as they relate to the planning proposal. The Department has provided further comment on key matters in Section 5 of this report.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 4 which have provided the following feedback.

Table 2 Advice from public authorities

Agency and advice	Council response
<p>Sydney Airport</p> <p>Sydney Airport noted Clause 6.8 Airspace Protection should be amended in line with Hurstville and Liverpool LEPs to capture all airspace protection surfaces which comprise Sydney Airport's prescribed airspace.</p> <p>This would involve using the proposal for development that is a controlled activity within the meaning of Division 4 of Part 12 of the <i>Airports Act 1996</i> as a trigger for a controlled activity approval.</p>	<p>Council raised concern about making this change post-exhibition when it cannot identify the affected properties. However, Council has made post-exhibition amendments to the wording of Clause 6.8 to model the provision off approaches in other LEPs and in alignment with Sydney Airport's feedback. Council proposes to undertake an additional review of the approach in the stage 2 review of the LEP in consultation with Sydney Airport.</p> <p>Sydney Airport has confirmed it is satisfied with Council's proposed approach of reviewing the airspace operations clause in the stage 2 review of the LEP.</p>
<p>Transport for NSW (TfNSW)</p> <p>TfNSW was supportive of the proposal, but made the following requests:</p> <ul style="list-style-type: none"> existing property and transport reservations are to be maintained; and objectives should be included in the R3 and R4 zones to permit increased density in accessible locations to maximise public transport patronage and encourage walking and cycling. <p>TfNSW also noted the introduction of light industries to the B1, B2 and B4 zones requires a DA assessment to include service and access considerations, including the surrounding road network and potential upgrades.</p>	<p>Council noted the submission and provided the following response to TfNSW's requests:</p> <ul style="list-style-type: none"> there are no changes to existing SP2 zoned land; and it has no objection to including the suggested objective(s) but will consider its inclusion as part of the stage 2 review of the LEP. <p>Council also noted the assessment of DAs for light industries in the business zones will involve an assessment of traffic impact and Council will stipulate the need for upgrades to the surrounding road network as conditions of consent if necessary.</p>
<p>Environment Protection Authority (EPA)</p> <p>The EPA recommended Council should seek to introduce policy measures in the LEP, including objectives and land uses, to support the introduction of the Circular Economy; and to add a consideration to the Earthworks clause which requires fill material to be virgin excavated natural material.</p>	<p>Council has committed to working with the EPA to implement Circular Economy policy measures in future stages of the LEP program. Council also noted many of the new land use terms suggested by the EPA (to support the circular economy) are already permissible in standard instrument zones under different land use terms.</p> <p>Council will consider amending the Earthworks clause in the stage 2 review of the LEP, given that making the addition the EPA suggests could duplicate an existing consideration.</p>

Agency and advice	Council response
Schools Infrastructure NSW Schools Infrastructure NSW noted the Schedule 5 listing for Summer Hill Public School should be amended to only include the part of the property containing heritage fabric; and suggested permitting restricted uses under the proposed B2 zone in Ashfield near Ashfield Public School and Ashfield Boys School.	Council officers have amended the listing for Summer Hill Public School in Schedule 5. Council also noted that restricted uses are already an innominate permitted use in the existing B4 zoning of Ashfield town centre. For this reason, no further changes are required.
Other: Council's internal Waste Management Team Council's internal Waste Management team provided a submission to confirm Council's tentative plan to use the Leichhardt Depot (in the Moore Street industrial precinct) as a food organics recycling transfer or processing facility.	As highlighted in table 3, Council considered as an attachment to its post-exhibition report, a Statement of Council Interest stating the planning proposal was not prepared to facilitate any change to the use of the recycling facility.

The following public authorities provided a submission, but did not raise any issues with the proposal:

- NSW Department of Planning, Industry and Environment – Environment, Energy and Science Group (EES);
- Heritage NSW;
- Civil Aviation Safety Authority (CASA); and
- Sydney Water.

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

4 Post-exhibition changes

4.1 Council's post exhibition changes

On 23 June 2020, Council resolved to proceed with the planning proposal with a number of post-exhibition changes. These changes related to the permissibility of land uses and heritage items. These changes are discussed in **Table 5** below.

Table 5 Council's post-exhibition changes

Issue	Proposed change
Land use	
Moore Street Industrial Precinct	Council resolved to apply the IN2 zone proposed under the Inner West LEP rather than rezoning the precinct to the IN1 zone, and permit the following additional land uses to reflect the existing situation: <ul style="list-style-type: none"> • Freight transport facilities; • General industries; • Resource recovery facilities; • Sewage treatment plants;

Issue	Proposed change
	<ul style="list-style-type: none"> • Timber yards; and • Vehicle body repair workshops.
Business and office uses in the IN2 Light Industrial and B7 Business Park zones	<p>The insertion of Clause 6.15 reflects the approach of the Marrickville LEP 2011 in permitting business and offices in the land use table of zones IN2 and B7, but providing that these uses must be for a creative purpose.</p> <p>However, Council noted the inclusion of business and office uses in the land use table creates a loophole pathway whereby the uses could be changed post-approval to a non-creative purpose through a complying development certificate. Council considers this 'loophole' may threaten the ongoing viability of industrial uses in its industrial precincts.</p> <p>Council amended its planning proposal to:</p> <ul style="list-style-type: none"> • prohibit business and office premises in zones IN2; • prohibit business premises only in B7 (Council cannot prohibit office premises in this zone since they are permitted in the standard instrument, however the requirement in subclause (4) that they must be for a creative purpose remains); and • insert the following subclause to Clause 6.15: <i>Despite any other provision of this Plan, development consent for the purpose of business premises or office premises is permitted with consent on land to which this clause applies.</i> <p>By prohibiting the uses in the land use table, their conversion under a complying development will no longer be possible. However, existing uses would retain existing use rights.</p>
Industrial retail outlets in the B1 zone	<p>The exhibited draft instrument and planning proposal erroneously contradicted one another about whether industrial retail outlets were permitted in the B1 zone.</p> <p>Council confirmed this was an administrative error, and industrial retail outlets are to be permitted in the B1, B2, B4, B5, B6 and B7 zones. This aligns with the planning proposal's permission of light industries throughout its business zones and will allow the sale of goods made on-site.</p> <p>Council confirmed matters raised by TfNSW can be appropriately managed as part of the DA process.</p>
Hotel and motel accommodation in the B5 Business Development zone	<p>Council amended its planning proposal to retain the permissibility of hotel and motel accommodation in the B5 zone in response to public submissions as described in section 3.1.</p>
Heritage	
Corrections to Schedule 5 Environmental Heritage:	<p>Council amended the planning proposal to delete the two listings of Lewisham sewage aqueduct and Lewisham railway viaduct in Ashfield LEP 2013 and Marrickville LEP 2011, and combine each into a single respective listing. The listings were separate because the items crossed the boundary of both LGAs.</p> <p>Council also made the following changes:</p>

Issue	Proposed change
	<ul style="list-style-type: none"> The listing for 2-32 Smith Street (The Flour Mill) was amended to the 2 pertinent lots at 16-18 Flour Mill Way, but contrary to the landowner's submission, Council decided that interiors should remain in the listing; and Removal or alteration of the listings to rectify the errors confirmed by Council staff, as detailed in the Summary of Submissions document. <p>For matters where Council required further advice prior to making a change, it flagged the stage 2 review of the LEP will involve seeking technical advice, and if necessary, making further change to Schedule 5.</p>
Haberfield Heritage Conservation Area	<p>Council modified the proposed Clause 6.20 Haberfield Heritage Conservation Area to clarify the controls for additions above the ground floor and for excavation apply to both new dwelling houses and alterations and additions.</p> <p>Changes were also made to the wording of the excavation control to apply to the 3m depth limit across the whole site, rather than only below the ground floor of an existing dwelling and extending to the whole site.</p> <p>The Standard Instrument term of 'ground level (existing)' has been included as a post-exhibition change as it will provide greater clarity as to the application of this clause, aligns with both the existing Clause 6.5 in Ashfield LEP 2012, and is consistent with the established SI definitions.</p>

The Department considers Council's post-exhibition amendments are justified as they:

- respond to matters raised during the public exhibition by the community and agencies;
- reflect the resolution of Council on 23 June 2021 to finalise the planning proposal;
- are administrative in nature and correct errors in schedule 5 of the Legacy LEPs;
- demonstrate alignment across the Legacy LEPs in largely retaining land use permissibility;
- provide greater clarity between the LEP and the State Environmental Planning Policy (Exempt and Complying Development) 2009 for business and office purposes; and
- provide greater clarity to development that can occur in the Haberfield Heritage Conservation Area.

4.2 The Department's post exhibition changes

Following Council's submission of its planning proposal for finalisation the Department has made several further amendments and notes these post-exhibition changes are justified and do not require re-exhibition.

These minor changes have been made to the proposed instrument through the drafting process in consultation with Legal and Parliamentary Counsel Office to ensure the intent of harmonising the three legacy LEPs and any proposed changes are aligned with objectives of the planning proposal.

These include the following changes:

- refining objectives within the residential and business zones under Part 2 Land use table and clauses 4.1, 4.3 and 4.4 under Part 4 Principal development standards applying broadly across the LGA to include references for development to be "...consistent with the desired future character";
- including "to achieve planned residential density in certain areas" as an objective in clause 4.1A Exceptions to minimum subdivision lot size for certain residential development;

- simplifying clause 6.8 Airspace operations to reflect advice from Sydney Airport and to maintain consistency with other consolidated LEPs such as Bayside LEP 2021. This will ensure all aircraft operating surfaces are considered as part of the development application process;
- replacing the former satisfactory arrangements clause under clause 6.25 Arrangements for designated State public infrastructure in relation to development on certain land at Victoria Road, Marrickville, with a “concurrence of the Secretary” to secure the provision of infrastructure at development application stage and to align with changes in the model provisions that address these matters;
- replacing the existing model clause related to flood planning with a new clause under Part 5 as exhibited by the Department in its flood prone land planning package;
- insertion of a new natural disaster clause in Part 5 facilitating the rebuild and recovery following natural disasters as exhibited by the Department in its State Environmental Planning Policy Amendment (Natural Disasters) 2021 package;
- insertion of amending LEP’s gazetted post exhibition that have amended the Legacy LEPs prior to the implementation of Inner West LEP – such as:
 - clause 6.21 of the Leichhardt LEP applying to land at 489-483 Balmain Road, Lilyfield;
 - clause 6.22 and 6.23 of the Leichhardt LEP applying to land at 1-5 Chester Street, Annandale;
 - clause 6.21 of the Marrickville LEP applying to land at 50-52 Edith Street, 67 and 73-83 Mary Street and 43 Roberst Street, St Peters;
 - Part 7 of the Marrickville LEP applying to land in Dulwich Grove;
 - Schedule 1 of the Marrickville LEP applying to land at 20 Smidmore Street, Marrickville;
- minor amendments to exhibited maps, including:
 - stylist changes to align with the [Standard Technical Requirements for Spatial Datasets and Maps](#);
 - to ensure the mapping accurately reflects the intent of the exhibited planning proposal;
 - updates to account for recently notified planning proposals need to be made;
- other changes resulting from the legal drafting process, including:
 - refinement of the aims of the plan to improve simplicity and to utilise plain English explanations in alignment with Parliamentary Counsel’s legal opinion and processes;
 - amending the model clause 1.9A Suspension of covenants, agreements and instruments to update legislation that has changed since the model clause was initially drafted;
 - removing boarding houses from the R2 Low Density Residential land use zone, and updating references within Part 4 and Part 6 in accordance with [Standard Instrument LEP Amendment \(Miscellaneous\)](#) and the introduction of SEPP (Housing) 2021;
 - moving area specific clauses within Part 4 into Part 6 Additional local provisions where appropriate – including the cross reference of clause numbers where required;
 - simplifying clause 5.4(10) Artisan food and drink industry exclusion to apply consistently across the LGA, rather than area specific;

- amendments to exhibited clause 6.17 Location of restricted premises and sex services premises to provide a consistent model clause across the three Legacy LEPs and to outline relevant assessment criteria (including separation distances from sensitive land uses) to mitigate impacts to amenity and land use conflict;
- introduction of sex services premises as a permitted use with consent to the IN2 Light Industrial and B2 Local Centre zones in addition to the IN1 General Industrial zone, to ensure permissibility is retained in relevant land use zones across the LGAs consistent with principle 3 and 4 as outlined in Section 1.1.3 of this report;
- simplification of the numbering of heritage items and additional permitted uses to be consistent with the approaches used in other consolidated LEPs; and
- amendments to the Dictionary in accordance with [Standard Instrument LEP Amendment \(Miscellaneous\)](#) and other subsequent amendments.

It is considered the Department's post-exhibition changes:

- do not alter the intent of the planning proposal and are minor in nature;
- directly respond to concerns raised during the public exhibition and respond to comments provided by public authorities;
- provide greater clarity as to the intent of the proposed clauses of the Inner West LEP;
- demonstrate alignment with the strategic planning framework, including the Region and District Plan, and Council's Local Strategic Planning Statement;
- correct administrative errors in the planning proposal and existing instruments; and
- in relation to the Moore Street Industrial Precinct, will not increase the impact of the proposal upon residential amenity or the environment.

Further discussion on the Department's post exhibition changes has been included in Section 5 of this report where the changes relate to the matters raised during the public exhibition or is relevant to the strategic and/or site-specific assessment of the planning proposal following the Gateway assessment.

5 The Department's assessment

The proposal has been subject to a detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement; and reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Department's Gateway determination report, the planning proposal submitted to the Department for finalisation:

- remains consistent with the regional and district plans relating to the site;
- remains consistent with the Council's Local Strategic Planning Statement;
- remains consistent with all relevant SEPPs; and
- any inconsistencies with s9.1 Ministerial Directions have either been appropriately justified or are minor in nature (see Section 4.1).

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. The Department has provided further comment and assessment against public and agency submissions, in addition to strategic and site-specific matters in Section 4.1 where relevant to the planning proposal and any post-exhibition changes.

Table 3 Summary of strategic assessment

Plan	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 5.1
State Environmental Planning Policies (SEPPs)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 5.1

Table 4 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1

5.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

Public Submissions

Council's post-exhibition report identified a number of key matters raised during public exhibition. The Department has provided an assessment below on the following key matters.

Moore Street Industrial Precinct, Lilyfield

A large volume of public submissions identified concerns with rezoning of the Moore Street Industrial Precinct. The Department considers Council's resolution of this matter is acceptable through its post-exhibition amendments.

The Department acknowledges this issue stems from the permissibility of 'general industry' in the IN2 Light Industrial zone of Leichhardt LEP 2013, whereas the IN2 Light Industrial zones of Ashfield LEP 2013 Marrickville LEP 2011 permit light industries rather than general industries. The latter approach is adopted in the proposed Inner West LEP and it aligns with the Standard Instrument.

The post-exhibition amendment will retain permissibility for many existing land uses in the precinct by inserting a clause into Schedule 1 Additional Permitted Uses, enabling uses to be carried out which are not permissible in the new IN2 Light Industrial zone of Inner West LEP. Other uses that may currently be operating in the precinct but were not captured under this planning proposal will retain their ability to redevelop through existing use rights.

Council has identified it will continue to work to implement its Employment and Retail Lands Strategy which will assist in forming the community's vision for the future of the Moore Street Industrial Precinct. Further amendments to the precinct would be subject to a separate planning proposal.

The NSW Government's Employment Zones Reform

The Department is in the process of standardising Business and Industrial zones to deliver new fit for purpose employment zones. The draft amendment Order to proposed to give effect to this approach was on exhibition until 30 June 2021. After consideration of submissions, the Department will finalise the proposed amendment and update the Standard Instrument Principal Local Environmental Plan with the new zones. Staged implementation in each council's LEP will then follow with the updated zones to be implemented during 2022. This will also apply to Inner West Council's LEP.

This will amend the permissible uses across business and industrial zones, in addition to development standards which support employment purposes.

The Inner West LEP includes employment zones, which are applied consistently with the Standard Instrument. Should the Minister make the proposed employment zone reforms, the Inner West LEP is capable of being amended accordingly.

Permissibility of certain land uses

Public submissions raised concerns with restricting a range of land uses in different zones:

Hotel and motel accommodation in B5 Business Development Zones

The Department acknowledges Council's exhibited Land Use Matrix incorrectly shows hotel and motel accommodation as being prohibited in the Marrickville LEP 2011 B5 Business Development zone. Council's decision to retain permissibility of hotel and motel accommodation in this zone adequately responds to community concerns about its prohibition. Future changes in the permissibility of this use may be considered as part of Council's implementation of its Employment and Retail Lands Strategy and as guided by community feedback.

Prohibition of Dual Occupancies

The planning proposal states the prohibition of dual occupancies in certain areas seeks to bring the Ashfield LEP 2013 and Leichhardt LEP 2013 areas into line with the Marrickville LEP 2011 areas. These changes are:

- to prohibit attached dual occupancies (R2 zone – noting detached dual occupancies are currently prohibited) and dual occupancies (R3 zone) in former Ashfield LGA areas;
- to prohibit dual occupancies in former Leichhardt LGA areas (currently only permitted in the R1, B1 and B2 zone under Leichhardt LEP 2013); and
- no changes to existing prohibition of dual occupancies in the former Marrickville LGA areas.

The Gateway determination considered this amendment is an appropriate alignment in planning policy in response to the introduction of the Low Rise Housing Diversity Code (LRHDC).

The Department considers this approach continues to be satisfactory on the basis that:

- in former Ashfield LGA areas - semi-detached dwellings remain as permitted with consent, providing for a similar built form outcome to attached dual occupancy development. This includes retention of existing development standards to facilitate semi-detached dwelling development under Clause 4.1A(2).
- The proposed LEP allows for a 200m² minimum lot size for semi-detached dwellings compared to a 450m² minimum for attached dual occupancies (see Ashfield DCP 2016 - DS22.1 and DS22.7, which specifies subdivision of a dual occupancy is 500m²) in former Ashfield LGA areas. It is also noted that this 200m² minimum is equivalent to the 400m² minimum for dual occupancies in the LRHDC;

- in former Leichhardt LGA areas – the only residential zone dual occupancy development is permitted is the R1 General Residential zone. This zone currently permits other residential uses including attached dwellings, semi-detached dwellings, multi-dwelling housing, residential flat buildings and shop-top housing. These will be retained under the new Inner West LEP.

Similarly, the new Inner West LEP retains the 200m² minimum lot size for subdivision in former Leichhardt LGA areas, which:

- is equivalent to the 400m² minimum for dual occupancies in the LRHDC; and
 - provides for the same development outcomes by requiring development to occur in conjunction with land subdivision. This will assist with retaining built form and lot size typologies currently present in former Leichhardt LGA areas. Attached-dual occupancy outcomes would be achieved through semi-detached dwelling developments and detached dual occupancy outcomes achieved by dwelling house developments.
- the Department approved LHS:
 - requires Council to monitor and review the supply and delivery of housing;
 - requires Council to evaluate what medium density can be delivered under changes adopted through amendments to council's LEP(s). In this regard, Council has identified it will review medium density housing in place-based studies to underpin Stage 2 of its LEP program. This aligns with the Department's approval of the LHS, which requires Council to monitor, review and evaluate the supply and delivery of housing in response to LEP amendment; and
 - identifies reviewing and amending controls (including FSR) in Leichhardt North, Leichhardt South and Lilyfield West to enable small-scale lot amalgamation and to capitalise on lots with dual street frontages to provide more and diverse housing. This is highlighted by Council as likely to occur in the 6-10 year period.
- the proposed prohibition of dual occupancies in certain areas does not undermine the housing capacity assumptions of the Department approved LHS;
- few development applications (approximately 20 applications for new dual occupancy developments since 2016) have been carried out for this form of development, and developers/landowners are more attracted to developing semi-detached dwellings which are allowed a smaller lot size and better marry with the local character of the Inner West LGA; and
- the planning proposal has indicated a future planning proposal will investigate expanding the area where Clause 4.1A(2) of the new Inner West LEP applies. This clause enables semi-detached dwellings on lots with a minimum lot size of at least 200m².

Heritage

Public submissions raised concerns relating to heritage, specifically in relation to the Haberfield Heritage Conservation Area and administrative errors in Schedule 5.

In relation to Haberfield Conservation Area, the Department has confirmed development should continue to be able to utilise roof space and excavated areas, subject to complying with the objectives and controls of the proposed local provision, which will ensure a single storey appearance is maintained.

The Department also considers the retained 500sqm numerical controls for minimum lot sizes are considered sufficient to support retention of existing built form and lot typologies consistent with the Haberfield HCA's established character.

Heritage NSW also provided a submission during the public exhibition which did not raise any concern with the proposal. The Department is satisfied Council has addressed other concerns relating to correcting listings in Schedule 5 through its post-exhibition amendments as they are generally administrative in nature.

Various requests to rezone land and amend development standards to increase development potential

Submissions were received which made various requests to rezone land and amend development standards to increase development potential, including:

- to meet future housing or employment targets;
- to enable specific development opportunities;
- to leverage strategic sites for highest order use;
- address feasibility and opportunity constraints; or
- to improve consistency and alignment across the LGA.

These requests related both to general requests and to specific sites.

In response, the Department notes that:

- the planning proposal was primarily seeking a harmonisation of the Legacy LEPs and does not comprise a comprehensive review of planning controls;
- future planning proposals will seek to revisit specific controls and standards through a staged approach; and
- post-exhibition amendments to specific sites to increase development density need to occur in accordance with the plan making process under the Act, including being publicly exhibited to allow adequate opportunity for community and public agency comment.

Summary of matters identified in the stage 2 review of the LEP

The intent of this planning proposal is to harmonise the statutory planning controls under the three legacy LEPs applying to the Inner West Local Government Area. For this reason, significant change has not been undertaken in terms of development standards. Council has identified a number of items which will be considered as part of the stage 2 review of the Inner West LEP. This includes:

- a comprehensive review of planning controls (including the preparation of a consolidated Inner West Development Control Plan) to implement the findings and actions of Council's Local Strategic Planning Statement and other local studies;
- further heritage assessments to evaluate the significance of heritage items in the inner west LGAs, including a comprehensive review of statutory listings;
- review of the opportunities for medium density housing as part of broader place-based studies;
- review of the opportunities for land rezoning where it is aligned with strategic policy; and
- review of Clause 6.2 Earthworks as raised by the EPA.

Strategic Assessment

The Greater Sydney Region Plan and Eastern City District Plan

The Department completed an assessment of the Greater Sydney Region Plan (Region Plan) and the Eastern City District Plan (District Plan) as part of its Gateway assessment. The post-exhibition amendments for this planning proposal are not considered to be inconsistent with the Region or District Plans and therefore remains consistent with the Gateway assessment.

Local Plans and Studies

As a condition of the Gateway determination, the final LEP was required to be updated to have regard to any endorsed Local Housing Strategy or Local Strategic Planning Statement. Since the Gateway determination, the following plans have been adopted by Council.

Our Inner West – Inner West Local Strategic Planning Statement (LSPS)

'Our Inner West', Council's LSPS was adopted on 31 March 2020 and sets out the vision for the area in 2036 and actions to be taken to achieve this vision. The planning proposal was originally considered against the draft LSPS at the time of Gateway determination and the Department considered it was generally consistent with the identified planning priorities.

The amended planning proposal has not changed the intent to prepare a consolidated LEP for the Inner West LGA and the post exhibition amendments are consistent with the final LSPS adopted by Council.

Inner West Local Housing Strategy

Council's LSPS seeks to implement the Inner West Local Housing Strategy (the LHS) to link Council's vision for housing with the objectives and targets set by the NSW Government and Greater Sydney Commission (now Greater Cities Commission). The LHS was adopted by Council on 3 March 2020 and the planning proposal supports its implementation through the harmonisation of the planning framework applying to the local government area. Specifically, this is reflected through a consolidated set of aims and land use table across each former LEP and the retention of existing LEP controls that control housing type, form and location.

On 8 July, the Department approved the LHS with conditions to be addressed by additional strategic planning work. Council will undertake further work in its stage 2 review of the LEP to implement the actions of this strategy in the planning framework, including a review of medium density housing controls and areas for future housing delivery.

In this regard, it is noted that at the time of preparing this report, Inner West Council has submitted a planning proposal to the Department for Gateway seeking to rezoning land under the Parramatta Road Corridor Urban Transformation Strategy (PRCUTS) seeking to address the identified shortfall in the LGAs housing supply.

Inner West Employment and Retail Lands Strategy

Council adopted its Employment and Retail Lands Strategy on 8 September 2020, which provides a strategic approach for the management of land, maximising productivity, facilitating job growth and building resilience in local economies. The planning proposal seeks to support the actions of this strategy by ensuring local centres and areas of employment are maintained and enhanced. The rezoning of the Ashfield Town Centre will ensure it is consistent with the zoning approach of other local centres in the LGA and reinforce its role in Council's centres hierarchy. However, the potential to facilitate development uplift through height of building or floor space ratio controls in the Ashfield Town Centre may be considered in the stage 2 review of the LEP. Further, the expansion of light industrial uses and industrial retail outlets throughout business zones, and the retention of clauses to promote the retention and operation of business and light industrial zones will further assist in facilitating job growth and maximising productivity.

The Department is yet to review or endorse Council's Employment and Retail Lands Strategy. However, the Department notes the Strategy is broadly consistent with Council's LSPS which was assured by the Greater Sydney Commission.

Section 9.1 Directions

The Gateway determination did not identify any unresolved section 9.1 Ministerial Directions or inconsistencies with any SEPPs. However, the Department considers the post-exhibition amendments to the planning proposal requires further assessment under section 9.1 Ministerial Directions:

Direction 1.3 Approval and Referral Requirements

The planning proposal was previously assessed against Direction 1.3 in the Gateway assessment. However, Clause 6.29 applying to certain land at Victoria Road, Marrickville was amended post-exhibition to require concurrence of the planning Secretary prior to issuing development consent. The former clause required satisfactory arrangements to be made for the provision of designated State public infrastructure prior to further development for urban purposes on certain land. The Department has since formed the opinion that 'satisfactory arrangements clauses' are no longer fit for purpose and the current model of requiring concurrence with the planning Secretary is considered appropriate.

The Department considers the amendment to clause 6.29 retains the intent of the original clause and aligns the Inner West LEP with the current approaches of the Department. Therefore, the planning proposal's inconsistency with the terms of this direction is minor of minor significance.

The Department considers the modifications made to the planning proposal post-exhibition is consistent with all other s9.1 Ministerial Directions and SEPPs as assessed at the time of Gateway determination.

Direction 4.1 Flood prone land

The Department has previously assessed flooding impacts as it applies to Direction 4.1 Flood Prone Land in the Gateway assessment. From 30 April to 25 June 2020, the Department exhibited changes to this direction to update considerations for flooding in land use planning practice. The changes include identifying suitable development that may occur in a floodway, that may mitigate the flood risk for other properties influenced by development. Additionally, the changes also seek to amend the relevant local environmental plans to reflect the introduction of two clauses for flood related development controls which has been included in the Inner West LEP as post exhibition amendments.

In response to the finalisation of amendments to the '*NSW Flood Prone Land Package*', the draft Inner West LEP 2021 has been updated to introduce a new flood planning clause 5.21 – Flood planning and 5.22 Special flood consideration. This clause replaces the exhibited Clause 6.3 - Flood Planning. Despite replacing the exhibited clause, the new flood planning clause:

- retains the intent of the exhibited draft Inner West LEP 2021; and
- responds to the NSW Government's 'Amendments to the NSW Flood Prone Land Package' which have been publicly exhibited and finalised by the Minister.

As this post-exhibition amendment is in response to the Minister finalising the amendments to the '*NSW Flood Prone Land Package*', it is unnecessary to re-exhibit the planning proposal.

With regard to the terms of the revised direction, the intent of the planning proposal remains consistent with the Gateway assessment report and does not seek to intensify uses on any flood prone land. In addition, the proposed post-exhibition amendments seek to give effect to this direction and the Department considers the planning proposal remains consistent with the terms of this direction.

Direction 4.4 Remediation of Contaminated Land

The planning proposal was submitted prior to the introduction of this direction. However, the Gateway determination was assessed under the former State Environmental Planning Policy No 55 – Remediation of Land (now SEPP (Resilience and Hazards) 2021) and the draft Contaminated Land Planning Guidelines.

The Gateway determination outlined the planning proposal is consistent with the SEPP and the Contaminated Land Planning Guidelines as the planning proposal does not seek to rezone land which would introduce any new sensitive uses. The Department also noted suitable measures are in place to ensure contamination and the suitability of land could be considered when detailed proposals are made as development applications.

The Department is satisfied the planning proposal is consistent within the terms of this direction.

State Environmental Planning Policies (SEPPs)

SEPP Amendment (Natural Disasters) 2021 - A New Natural Disaster Clause

In response to the finalisation of *State Environmental Planning Policy Amendment (Natural Disasters) 2021* (the Natural Disaster SEPP), a new natural disaster clause is to be introduced through the draft Inner West LEP 2021.

From 4 to 31 August 2020, the Department publicly exhibited a proposed new optional provision to facilitate rebuild and recovery following natural disasters, by:

- enabling development consent to be granted for the repair or rebuild of a dwelling house or secondary dwelling that has been destroyed or damaged by a natural disaster, despite any other provision of an LEP which would otherwise preclude consent from being granted;
- not requiring applicants to submit a request to vary a development standard where a development standard is contravened. DAs will still undergo a merit assessment to ensure that dwelling houses and secondary dwellings are of an appropriate size, location and design in the context of the site; and
- providing for situations where key planning controls or development standards have changed over time, removing the need to formally request a variation under clause 4.6 of the relevant LEP will save time and resources for applicants and consent authorities.

During the exhibition period, councils were asked to provide feedback on the draft clause and express their interest in being involved in subsequent stages of implementation. This included a formal opt-in period to confirm their inclusion in an amending SEPP to insert the final clause into their LEPs.

Inner West Council was one of several Councils to opt-in and due to timing, it is appropriate to implement the amendment through the draft Inner West LEP 2021. As part of this process, Council nominated that the clause apply to the R1, R2 and R3 land use zones.

As this post-exhibition amendment is in response to the Minister finalising the Natural Disaster SEPP, it is unnecessary to re-exhibit of planning proposal.

SEPP (Exempt and Complying Development) Amendment (Low-Rise Housing Diversity Code) 2020

On 1 July 2020, the Low-Rise Housing Diversity Code (LRHDC) commenced in Inner West LGA. The LRHDC forms part of *State Environmental Planning Policy (Exempt and Complying Development) 2008* (Codes SEPP).

The consolidation of the three Legacy LEPs under this planning proposal has resulted in amendments to the permissibility of residential land uses, which include to prohibit dual occupancies in all zones across the Inner West LGA. This amendment would prevent complying development for dual occupancies under the LRHDC.

As discussed earlier in this report, the Department considers this amendment is consistent with the Gateway determination, the approved LHS and the matters raised during public exhibition have been adequately justified.

It is also noted that multi-dwelling housing (terraces) and manor house will be permitted as complying development in accordance with the Land Use Table and LRHDC.

SEPP (Housing) 2021

The SEPP (Housing) 2021 aims to facilitate the delivery of more diverse and affordable housing types and will introduce three new housing types to the Standard Instrument LEP definitions. The Inner West LEP has been updated to ensure consistency and reflect the provisions of the SEPP (Housing) 2021. This includes amendments to the planning proposal as outlined in Section 4.2, such as the removal of boarding houses as a permitted use with consent in R2 Low Density Residential Zones and updating definitions and references in Part 4 and Part 6.

The planning proposal, as amended, is consistent with the provisions of the SEPP.

Site Specific Considerations

Post exhibition amendments to clause 6.17 Location of Restricted Premises and Sex Services Premises

As part of the legal drafting process, there was a need to review the application of clause 6.17 Location of Restricted Premises and Sex Services Premises to ensure a consistent approach is delivered across the LGA. The planning proposal outlines that all three Legacy LEPs currently operate with different approaches in the provisions under each clause and their application in the land use table.

The Department proposed the following changes to this clause and the land use table:

- apply the model clause demonstrated in the Ashfield LEP 2013 with minor amendments, including:
 - clarification of separation distances between residential and public recreation zones;
 - include a provision that does not enable sex services premises to be allowed at the ground floor of development in the B2 Local Centre land use zone;
 - include a provision requiring the consent authority to consider the cumulative impact of the number of sex services or restricted premises within an area;
- enable the application of sex services premises in the land use table to the B2 Local Centre, IN1 General Industrial and IN2 Light Industrial land use zones; and
- retain the proposed permissibility for restricted premises as exhibited by Council.

The Department considers this approach is preferable and is a justified post-exhibition change because:

- the model clause with the proposed amendments is consistent with the intent of existing clauses under the Leichhardt LEP 2013 and the Marrickville LEP 2011.

- The proposed amendments to this model clause provide a strong basis to protect potential amenity impacts associated with the uses. This includes the interface with the public domain, adjoining zones and other sensitive uses, separation distances, a consideration of the cumulative impact of the number of sex services premises of restricted premises in a particular location and the impact of these uses on the areas frequented by children
- it is consistent with the key principles developed by Council to compare and assess the three LEPs, specifically Principle 3 and Principle 4. In applying these principles:
 - the permissibility of the Sex Services Premises land use:
 - it is currently permitted with consent B2 Local Centre Zone of both the Ashfield and Leichhardt LEPs and in the IN2 Light Industrial Zone of the Marrickville and the Leichhardt LEPs;
 - other Business zones (i.e. B4 Mixed Use) were not included due to the potential land use conflicts that could occur with potential residential uses in these areas. Whilst some residential uses are permitted in the B2 Local Centre zone, it is considered to align closely to principles 3 and 4 and is perceived to be a lower risk with the intent of these areas to facilitate non-residential uses;
 - the B6 Enterprise Corridor zone has not been included as it is only listed in the Marrickville LEP;
 - the inclusion of sex services premises in the IN1 General Industrial zone whilst only listed in the Marrickville LEP is considered a low risk of creating significant amenity impacts, is aligned with the objectives of the zone and is consistent with the exhibited planning proposal to apply broadly across the LGA.
 - The performance criteria as amended in the clause will further influence where these uses can be carried out in either zone.
 - the inclusion of Restricted Premises under this clause is considered appropriate to align with the nature of the clause. Its application across the land use table has been considered to ensure alignment across the three LEPs as demonstrated in the land use matrix provided as an attachment to the planning proposal.
 - where these uses are currently in operation but the permissibility changes, they would still benefit from existing use rights.

As the intent of the planning proposal is to consolidate the three LEPs, the Department considers this is an appropriate post exhibition change to deliver the intent being sought under the planning proposal, and to ensure the appropriate practical application of this clause. Therefore, this change is not considered to warrant a re-exhibition of this planning proposal.

Other matters – consistency with site specific considerations in the Gateway assessment

The planning proposal, as amended, remains consistent with the Gateway assessment report as it will provide the community with a single LEP with a unified set of provisions and decreased amount of associated documentation. The Department considers the introduction of the Inner West LEP will:

- assist in improving clarity and consistency and will also assist in providing certainty to landowners
- ensure the proposed land use table and zones strike an appropriate balance of environmental protection, the consideration of residential amenity, and flexibility for business;

- retains and effectively manage existing employment land; and
- be unlikely to result in the alteration of infrastructure requirements in the Inner West LGA as there is no proposed intensification of land uses.

6 Drafting

The Department consulted the following stakeholders after the assessment.

Table 5 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	A consolidated series of maps applying to the Inner West LGA have been prepared by Council, reviewed by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Council confirmed on 11/05/2022 that it approved the draft and that the plan should be made.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 13/07/2022 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

7 Recommendation

It is recommended the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because it:

- will fulfil Council's obligations under the EP&A Act to prepare a LEP which gives effect to the Eastern City District Plan;
- will provide a consolidated LEP for the Inner West with a single set of provisions, development standards and zones;
- will resolve discrepancies and anomalies from the legacy LEPs of the former Ashfield, Leichhardt and Marrickville LGAs;
- is consistent with all applicable, SEPPs and strategic plans;
- has demonstrated consistency with s9.1 Ministerial Directions and any inconsistencies are justified or are of minor significance; and
- will not result in significant adverse impacts upon the environment.



Alexander Galea
Manager, Place and Infrastructure
Dated: 22 July 2022



Laura Locke
Director, Eastern and South Districts
Dated: 4 August 2022



Amanda Harvey
Executive Director, Metro East and South
Dated: 9 August 2022

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