

## Planning and Assessment

IRF20/5308

### Plan finalisation report

Local government area: Fairfield

#### 1. NAME OF DRAFT LEP

Fairfield Local Environmental Plan 2013 (Amendment No 37) (draft LEP). The draft written instrument is at **Attachment LEP**.

#### 2. SITE DESCRIPTION

The planning proposal (**Attachment A2**) applies to land in the Fairfield Local Government Area (LGA) subject to the Fairfield LEP 2013 (Figure 1). It is noted that the planning proposal does not affect land subject to the State Environmental Planning Policies (Western Sydney Parklands) 2009, (Western Sydney Employment Area) 2009, and (State Significant Precincts) 2005.

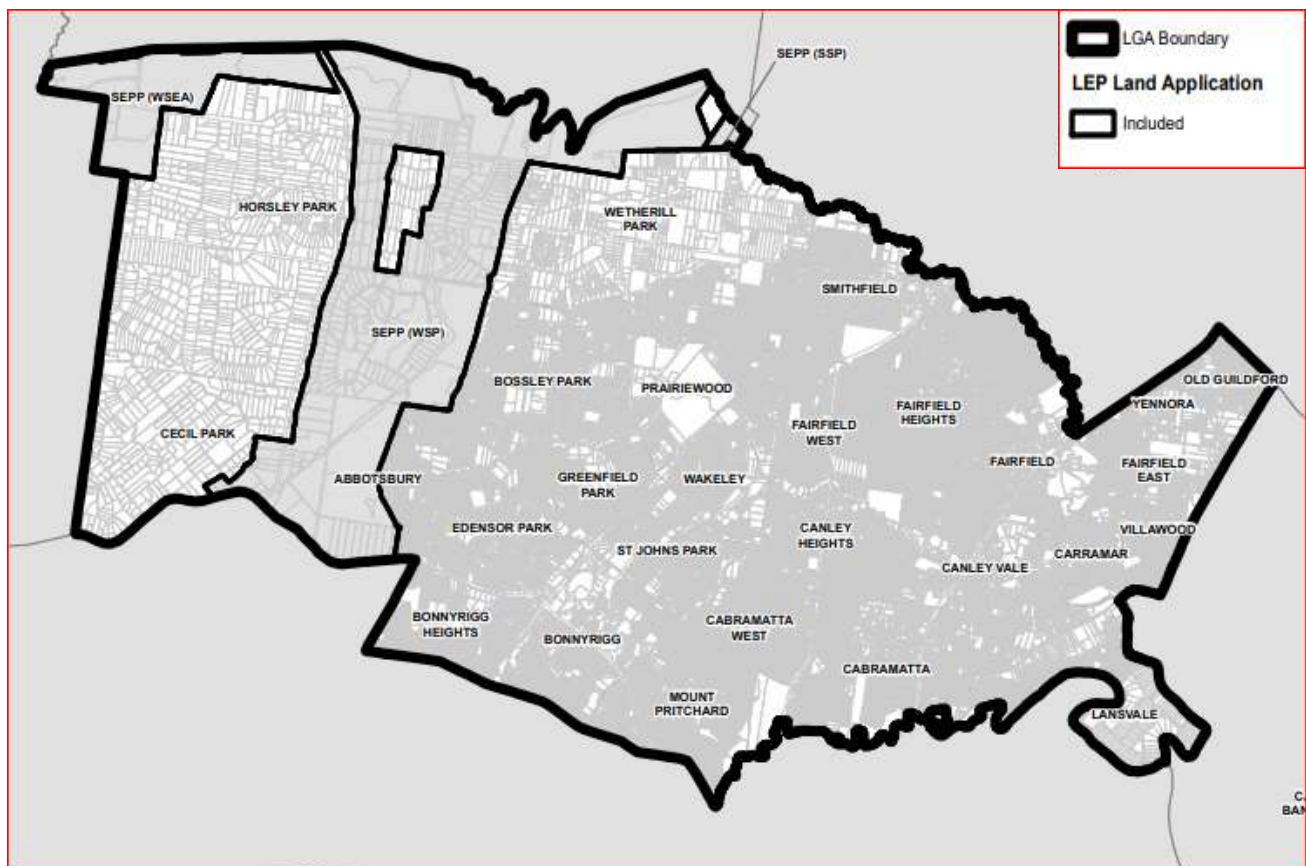


Figure 1: Land Application Map

#### 3. PURPOSE OF PLAN

The planning proposal (**Attachment A2**) is part of broader LEP reforms intended to align the Fairfield Local Environmental Plan (LEP) 2013 with the Western City District Plan and Fairfield Local Strategic Planning Statement (LSPS). This planning proposal forms Stage 1 of this broader amendment.

The draft LEP seeks to amend Fairfield LEP 2013 as follows:

- include additional objectives relating to Height of Buildings and Floor Space Ratio clauses to encourage better building design;
- introduce new local clauses relating to active street frontages, design excellence and hospital helicopter airspace;
- amend Schedule 2 (Exempt Development):
  - to permit display of goods on Council owned footpaths in certain Town Centre Precincts without the need for development consent;
  - to increase the maximum period of temporary uses at the Fairfield Showground from 52 to 104 days; and
  - allow emergency works on Council owned or managed land without the need for development consent;
- amend Schedule 5 – Environmental Heritage, to update the description of 10 properties to reflect current property details; and
- amend zoning on three properties to address current zoning anomalies.

A detailed explanation of these provisions is provided at **Attachment I**.

In addition to the above, the draft LEP includes a new savings and transitional clause in Fairfield LEP 2013 to ensure that proposed amendments do not affect any lodged development applications or appeal processes.

#### **4. STATE ELECTORATE AND LOCAL MEMBER**

The Fairfield LGA (site) falls within the following state electorate:

- Mr (Guy) Gaetano Zangari MP, Member for Fairfield
- Mr (Nick) Nickola Lalich, MP, Member for Cabramatta
- Dr (Hugh) Paul Joseph Hugh McDermott, MP, Member for Prospect
- Mrs Tanya Davis MP, Member for Mulgoa

The Fairfield LGA (site) falls within the following federal electorate:

- The Hon Chris Bowen, MP, Federal Member for McMahon
- Mr Andrew Rohan, MP, Member for Smithfield

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal.

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

#### **5. GATEWAY DETERMINATION**

The Gateway determination issued on 14 April 2020 (**Attachment B**) determined that the proposal should proceed subject to conditions.

Condition No. 1 of the Gateway determination requires, prior to exhibition, Council to amend the planning proposal:

- to remove references of Aim of the Plan related to the LSPS and Floodplain Risk Management,
- update list of affected heritage items on page 16 of the Proposal,
- update height of building maps for 18 Butler Avenue, Bossley Park,

- include the intention of new savings and transitional clause to ensure the amendments do not affect any development application or appeal process lodged since submission of the Proposal, and
- include a note that the draft proposed clauses would be subject to legal drafting.

Council amended the planning proposal prior to public exhibition and consultation with public authorities and organisations.

Condition No. 1 also requires Council prior to public exhibition to consult the Chief executive of the South-Western Sydney Local Health District (LHD) and to obtain agreement of the proposed new clause associated with Liverpool Hospital Helicopter Airspace obstacle identification surfaces (OIS).

Council consulted and received a letter from the Chief Executive of the LHD advising that LHD has no objections to the proposed amendment concerning the hospital airspace.

The Gateway determination also requires Council to submit the planning proposal for finalisation by 30 June 2020. The Department received the request by Council to finalisation the planning proposal 26 June 2020. With the unexpected delay caused by mapping, the LEP amendment maps were submitted on 5 November 2020.

The Department is now satisfied that Council has met all the conditions of the Gateway determination and the planning proposal is adequate for finalisation.

## 6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 8 May to 8 June 2020.

### 6.1 Community Submissions

Council received 4 submissions from private organisations (**Attachment G**). No submissions were received from private land owners/residents in Fairfield City concerning the proposed provisions in the planning proposal.

A number of submissions raised issues that related to strategic studies (e.g. review of Council's Residential Development Strategy), that are currently underway and will inform LEP proposals associated with the Stage 2 Accelerated LEP. None of the submissions received raised issues or comments that warrant any amendment to the planning proposal.

Other issues raised in the submissions related to Design Excellence clause and are summarised as below:

#### Design Excellence clause

Support the intent of clause but do not support inclusion in Fairfield LEP. Rather it is recommended that a detailed explanation be provided of information applicants need to submit with DAs in relation to design excellence.

Council should provide a summary of expected compliance costs associated with applying design excellence, e.g. through guidelines.

#### *Council Response*

The design excellence clause is based on a model clause that is already in use in a number of councils in Sydney Region. Under the clause, Council will be able to rely on the Urban Design Studies and Public Domain Studies that are being prepared for various centres and areas of the City to inform applicants of Council's detailed requirements in relation to 'design excellence'.

This is particularly relevant to the design and architectural appearance of future development at the interface with the public domain, as well as how the principles of design

excellence translate to improvements to streetscape appearance and levels of amenity in the urban areas of the City.

The above outcomes are directly linked to the themes contained in the Western City District Plan as well as a number of Actions under the Fairfield LSPS 2040, in particular Planning Priority 4 – Provide Attractive, Healthy, Accessible and Safe Places for the whole of the community.

Following completion of the Urban Design Studies and Public Domain Studies, relevant updates will be made to Council’s City Wide DCP to help clarify the requirements and expectations for development under the Design Excellence clause. It is noted that related provisions have already been incorporated in the recently implemented Villawood and Fairfield Heights Town Centre DCPs that support the urban design studies and LEP amendments implemented for these areas.

The new local clause will also require proponents to consider ‘design excellence’ at an early stage in the development process, thus reducing the potential for delays and costs once the DA is submitted to Council.

#### Department Comment

It is considered that Council has adequately addressed all the issues raised in the submissions.

### **6.2 Local Planning Panel**

The Fairfield Local Planning Panel considered the planning proposal on 18 September 2019 (pre-Gateway) and recommended that Council refer the proposal to the Department for consideration as part of the Gateway determination (**Attachment F**).

### **7. ADVICE FROM PUBLIC AUTHORITIES**

Council was required to consult Greater Sydney Commission; Heritage NSW; Department of Premier and Cabinet; Civil Aviation Safety Authority; NSW Ambulance; Chief executive of the relevant local health district; surrounding LGAs; and Local MPs.

Council has consulted these authorities and received 8 submissions (**Attachment H**).

Penrith City Council, Liverpool City Council, South Western Sydney Local Health District, Heritage NSW, Civil Airspace Safety Authority and Sydney Water raised no objection to the proposal.

The following table provides a summary of main issues raised in the submissions and Council’s justification to the issues:

| <b>Public Authority</b>                                | <b>Comments/Issues</b>                                                                                                                                                                                                        | <b>Council Response</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Southern NSW Ambulance Rescue (Aeromedical Operations) | No objections raised to proposed local clause relating to Helicopter Airspace over Mt Pritchard.<br><br>Rely heavily on consultant’s Aviation Impact Assessment (AIAs) reports to understand potential impacts of development | The propose local clause regarding Helicopter airspace is a ‘model’ clause issued by the DPIE and does not include reference to AIAs.<br><br>However, there is scope for Council to incorporate detailed provisions in the Fairfield City Wide DCP that reference this matter. This approach also provides for greater flexibility in the event that assessment requirements under the National approach change over time.<br><br>The above approach was discussed with the Acting Director of NSW Ambulance Rescue |

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|                                  | <p>proposals on helicopter operations.</p> <p>Essential that Council requests AIAs to ensure compliance with National Airports Safeguarding Framework</p>                                                                                                                                                                    | <p>who endorses inclusion of the requirements for an AIA in the City Wide DCP. There is scope to include this measure in the bi-annual review of City Wide DCP due to be reported in the final quarter of this year.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>Transport for NSW (TfNSW)</p> | <p>Active Street frontage maps, particularly in Villawood TC along Woodville Rd would require higher place function.</p> <p>Likely to result in increased place requirements such as loading and parking, as well a cross-corridor pedestrian activity</p> <p>May conflict with existing and future north-south movement</p> | <p>The Active Street clause supports detailed investigations and design proposals contained in the urban design studies and public domain studies being undertaken for each of Centres affected by the proposed clause.</p> <p>In combination, the urban design and public domain studies factor in the need for maintaining 'place function' including parking, loading requirements as well as pedestrian movements.</p> <p>For Villawood Town Centre, this also includes recent implementation of a new town centre DCP, urban design study and masterplan (supporting recent LEP amendments) that address specific place function issues including localised traffic and movement issues along Woodville Rd.</p> <p>The Active Frontage clause is a 'model clause' issued by the NSW DPIE and includes provisions that remove the requirement for an active street frontage for any part of a building that is used for "entrances and lobbies, access for fire services and vehicle access".</p> |

Department Comment

Council has satisfactorily addressed the issues raised by agencies.

**8. POST-EXHIBITION CHANGES**

No amendments were made to the planning proposal following public exhibition.

**9. ASSESSMENT**

**9.1 Section 9.1 Directions**

At the time of the determination (**Attachment B**), the delegate of the Secretary agreed that the planning proposal's inconsistency with section 9.1 Direction 6.3 Site Specific Provisions in minor or justified in accordance with the terms of the Direction. No further approval is required in relation to this Direction. However, Council may still need to obtain the agreement of the Secretary to comply with the requirements of the following section 9.1 Directions:

### Direction 3.5 Development Near Regulated Airports and Defence Airfields

The objectives of this direction are to ensure the effective and safe operation of regulated airports and defence airfields, ensure that their operation is not compromised by development in the vicinity, and ensure development situated on noise sensitive land incorporates appropriate mitigation measures. This direction applies as the proposal affects Liverpool hospital helicopter airspace.

As stated above under 'Section 5 Gateway determination' of this report, Council was required to consult with the Chief Executive of the South-Western Sydney Local Health District (LHD) and obtain agreement to the proposed new local clause associated with the Liverpool Hospital Airspace obstacle identification surfaces (OIS).

On 8 June 2020, Council obtained a letter from the Chief Executive of the LHD advising that the LHD has no objections to the proposed amendment concerning the hospital airspace.

Therefore, the planning proposal satisfies the requirement of the Direction. To ensure there are no issues of inconsistency, the approval of the Secretary's delegate is recommended on the basis of minor significance.

### Direction 6.1 Approval and Referral Requirements

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

This planning proposal introduces referral requirements (to the chief executive of the relevant local health district) for development that intrudes into the Liverpool hospital helicopter airspace which is inconsistent with this direction. However, this inconsistency can be justified if the subject public authority does not object to the inclusion of the referral provision.

However, in accordance with the requirements of this direction, Council was required to consult the relevant authority prior to public exhibition to ensure it does not object to the progression of the planning proposal.

As stated above under Direction 3.5, Council consulted with Chief Executive of the South-Western Sydney Local Health District, who raised no objections to the proposed amendment concerning the hospital airspace.

In light of above the inconsistency is considered to be justified. The approval of the Secretary's delegate is recommended on this basis.

### **9.2 State environmental planning policies**

The planning proposal is consistent with the all relevant State Environmental Planning Policies.

### **9.3 State, regional and district plans**

#### Western City District Plan

The Fairfield LGA is located within the Western City District, therefore the Western City District Plan applies. The main objective of the planning proposal is to ensure the Fairfield LEP 2013 aligns with the Western City District Plan.

Therefore, the Department is satisfied that the planning proposal gives effect to the district plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

## 10. MAPPING

There are 18 maps associated with this planning proposal (**Attachment Maps**) which have been submitted via the ePlanning Portal. These maps have been examined by GIS staff and meet technical requirements.

## 11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment C**). Council confirmed on 24 November 2020 that it was happy with the draft and that the plan should be made (**Attachment D**).

## 12. PARLIAMENTARY COUNSEL OPINION

On 23 November 2020 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

## 13. RECOMMENDATION

It is recommended that 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:

- the proposal has a strategic merit being consistent with the Western City District Plan;
- the inconsistency with section 9.1 Directions 3.5 Development Near Regulated Airports and Defence Airfields and 6.1 Approval and Referral Requirements, is justified in accordance with the terms of the Directions; and
- the proposal:
  - will introduce new aims into the clause relating to development standards (height and FSR) to improve built form and urban design outcomes in future development;
  - proposes a number of changes to the local provisions to achieve the Actions of Fairfield LSPS, including active street frontages and design excellence;
  - deals with a number of housekeeping amendments to Fairfield LEP 2013, relating to updates of property descriptions for heritage listed properties; and
  - dealing with zoning anomalies identified for a number of properties in the City.



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25/11/2020

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