

Planning, Design & Public Spaces

Gateway Determination Report

LGA	Burwood
PPA	Burwood Council
NAME	Amend Clause 6.2 of the Burwood LEP 2012 (0 homes, 0 jobs)
NUMBER	PP 2019 BURWO 001 00
LEP TO BE AMENDED	Burwood Local Environmental Plan 2012
ADDRESS	N/A
DESCRIPTION	N/A
RECEIVED	1 August 2019
FILE NO.	IRF19/2494
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of planning proposal

The proposal seeks to amend the Burwood Local Environmental Plan (LEP) 2012 to:

- amend clause 6.2 - Flood Planning to identify flood affected land by introducing a Flood Planning Map; and
- amend the flood planning level definition to also account for local overland flooding and not just mainstream flooding.

Council has undertaken four Overland Flood Studies of the Burwood Local Government Area. These studies have resulted in the development of the Consolidated Flood Identification (CFI) Map (**Figure 1**, over the page). It is intended that a Flood Planning Map, consistent with the CFI Map, be introduced into the LEP to identify flood affected land. This flood mapping will identify land affected by a 1:100 flood event, with a 0.5m for mainstream flooding¹ and 0.3m freeboard for local overland flooding².

Clause 6.2 of the Burwood LEP 2012 provides a definition for land that is at or below the flood planning level, which is currently a 1:100 Average Recurring Interval³ (ARI) Flood

¹ **Mainstream Flooding** means inundation of normally dry land occurring when water overflows the natural or artificial banks of a stream, river, estuary, lake or dam.

² **Local Overland Flooding** means inundation by local runoff rather than overbank discharge from a stream, river, estuary, lake or dam.

³ **Average Recurring Interval** means the long-term average number of years between the occurrence of a flood as big as or larger than the selected event. For example, floods with a discharge as great as or greater than the 20 year ARI flood event will occur on average once every 20 years. ARI is another way of expressing the likelihood of occurrence of a flood event.

Event with 0.5m freeboard⁴. The CFI Map also identifies land affected by local overland flooding. Consequently, it is intended to amend the flood planning level definition to also account for land affected by local overland flooding as well as mainstream flooding.

Site description

This planning proposal affects all land identified within the CFI Map, shown in **Figure 1**.

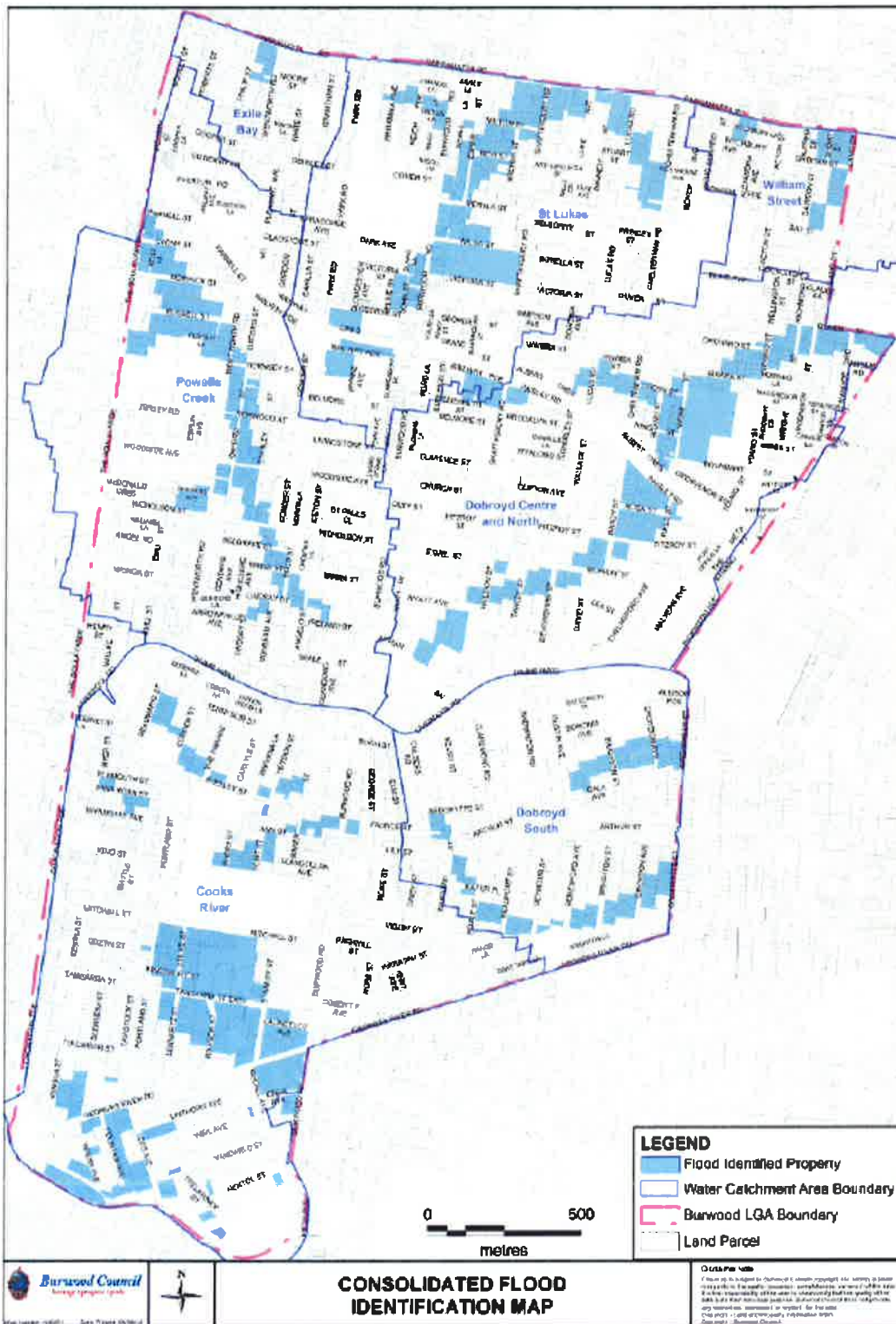


Figure 1: Consolidated Flood Identification Map (Source: Planning Proposal)

⁴ **Freeboard** means to provide reasonable certainty that the risk exposure selected in deciding on a particular flood chosen as the basis of the flood planning level is actually provided. It is a factor of safety typically used in relation to the setting of floor levels, levee crest levels etc. Freeboard is included in the flood planning level.

The land identified within the CFI Map as being flood affected is zoned for residential, business and recreation purposes.

Existing planning controls

The Burwood LEP 2012 includes clause 6.2 Flood planning, which is intended to:

- minimise the flood risk to life and property associated with the use of land;
- allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change; and
- avoid significant adverse impacts on flood behaviour and the environment.

This clause applies to land at or below the flood planning level. The flood planning level is currently defined in subclause 5 as 'land at or below the level of a 1:100 ARI (average recurrent interval) flood event plus 0.50 metre freeboard' – consistent with the model provision.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- is compatible with the flood hazard of the land, and
- will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- incorporates appropriate measures to manage risk to life from flood, and
- will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

No maps or controls in the Burwood LEP 2012 specify what land is at or below the Flood Planning Level as defined within clause 6.2.

Background

NSW Government Floodplain Management Policy Framework and Overland Flood Studies

Under the NSW Government Floodplain Management Policy Framework, the management of flood liable land remains the responsibility of local government. This includes responsibility for setting appropriate planning and development controls, including flood planning levels, for flood affected land.

The State Government provides funding for flood studies, floodplain risk management plans and works to alleviate existing problems, to undertake the necessary technical studies to identify and address the problem. It also provides specialist technical advice to assist Councils in the discharge of their floodplain management responsibilities.

To implement the Policy, Council has embarked on a program of studies and actions as set out in the NSW Floodplain Development Manual (the Manual) with the assistance of Sydney Water Corporation.

This includes the preparation of four over land flood studies. These four studies have informed the CFI Map which is the subject of this planning proposal. These four overland flood studies are:

- Dobroyd Canal Overland Flood Study;
- Cooks River Overland Flood Study;

- Powells Creek Overland Flood Study; and
- Exile Bay-St Luke's-William Street Overland Flood Study.

These studies have been prepared in accordance with the NSW State Government's Flood Policy, including the NSW Floodplain Development Manual. This framework provides a means of ensuring that any new development is compatible with flood hazards and does not create additional flooding problems in other areas.

The Policy provides for technical and financial support by the Government through five sequential stages:

Step 1 – Data Collection

- to compile existing data and collect additional data in order to assess flood behaviour and the effectiveness, costs and benefits of management measures.

Step 2 – Flood Study

- to determine the nature of flood risk by providing information on the extent, level and velocity of floodwaters and on the distribution of flood flows across various sections of the floodplain.

Step 3 – Floodplain Risk Management

- to identify, assess and compare various risk management options and consider opportunities for environmental enhancement as part of mitigation works.

Step 4 - Floodplain Risk Management Plan

- to provide input into the strategic and statutory planning roles of Council. The management plan provides the type of information necessary for adequate forward planning for flood prone land.

Step 5 - Implementation of the Plan

- to implement the Floodplain Risk Management Plan once it has been adopted by Council. The implementation will include incorporating flood related development controls into an Environmental Planning Instrument and flood education.

This planning proposal constitutes step five in this process through amendment of Clause 6.2 in the Burwood LEP 2012 to identify flood prone land.

Summary of recommendation

It is recommended that the proposal proceed subject to conditions because:

- it gives effect to the Eastern City District Plan and is consistent with the relevant section 9.1 Ministerial Directions and state environmental planning policies;
- it will ensure development that is compatible with the flood exposure;
- it will ensure that land affected by flooding is clearly identified and that the appropriate consideration and measures can then be implemented to ensure the safety of community and property; and
- it would have satisfactory environmental, social and economic impacts.

PROPOSAL

Objectives or intended outcomes

The planning proposal seeks to amend clause 6.2 of the Burwood LEP 2012 to identify flood affected land as shown in the CFI Map. Through this amendment, it is intended that planning controls related to flood can be applied to ensure development is compatible with the flooding affectation.

The statement of objectives accurately describes the intent of the planning proposal.

Explanation of provisions

This planning proposal seeks to amend Clause 6.2 of the Burwood LEP 2012 by:

- introducing a flood planning map, consistent with the CFI Map; and
- introducing a definition in clause 6.2 that provides for a definition for a flood planning level regarding local overland flooding.

The flood planning map identifies land affected by a 1:100 flood event, consistent with the flood planning level and freeboard as proposed.

The proposed amendments are consistent with the flood planning model provisions. The four flood studies undertaken by Council, which included ground truthing, have informed the proposed 0.5m freeboard for mainstream flooding and 0.3m freeboard for local overland flooding.

It should be noted that the proposals reference to 'overland flooding' will have to be updated to 'local overland flooding' to be consistent with the definition in the Manual. This has been conditioned in the Gateway.

Finally, the explanation of provisions is consistent with the objectives and intended outcomes of the planning proposal and as such is satisfactory for community consultation.

Mapping

The planning proposal seeks to introduce a Flood Planning Map consistent with the CFI Map provided with the planning proposal.

It is noted that Annexure C states that the Flood Planning Map may change as a result of community consultation. This reference should be deleted from the planning proposal and has been conditioned in the Gateway.

NEED FOR THE PLANNING PROPOSAL

The planning proposal submitted by Council considered whether the planning proposal was the result of any strategic study or report and whether a planning proposal was the best means of achieving the stated outcome.

Is the planning proposal a result of any strategic study or report?

The planning proposal is the result of four Council commissioned Overland Flood Studies to provide greater certainty with respect to flood affected land within the Burwood Local Government Area. The data provided by the studies was prepared in accordance with NSW Floodplain Risk Management Process. The studies led to the development of the CFI Map which identifies land at and below the 1:100 ARI Flood Event with 0.5m freeboard for mainstream flooding and 0.3 for local overland flooding.

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal is the only means of amending clause 6.2 of the Burwood LEP 2012. It will ensure the most current flooding information is accessible and is used by Council in its flood management practices, including the development assessment process.

The LEP amendment will also provide the community certainty and transparency as to what land in the Burwood LGA is affected by the 1:100 ARI Flood Event with 0.5m freeboard for mainstream flooding and 0.3 for local overland flooding.

STRATEGIC ASSESSMENT

District Plan

Eastern City District Plan

The *Eastern City District Plan*, released in March 2018, identifies 22 planning priorities and associated actions that are important to achieving a liveable, productive and sustainable future for the district, including the alignment of infrastructure with growth.

This planning proposal is consistent with the relevant planning priorities of the district plan being:

Planning Priority E20: Adapting to the impacts of urban and natural hazards and climate change.

This planning priority seeks to ensure that effective planning is undertaken to mitigate and reduce the exposure to the District's natural hazards, such as flooding and storms. In the case of flooding, the District Plan under this priority directs local government to the policy provided in the NSW Floodplain Management Manual 2005. This planning priority also seeks to ensure that resilience is built to withstand the shocks and stresses of natural hazards.

This proposal has been informed by four overland flood studies prepared in accordance with the NSW Floodplain Management Manual, which will ensure accurate and effective identification of flood prone land in the Burwood LGA. Furthermore, this planning proposal will provide certainty and transparency as to which land in the Burwood LGA is affected by flooding, ensuring the effective application of planning controls related to flooding impacts. This will ensure development is compatible with the flood hazard, reducing property and the community's exposure to flooding hazards. Finally, through ensuring that development is compatible to the flooding hazard on the land, this will reduce the risk to property and people on surrounding land.

Therefore, this planning proposal gives effect to the relevant planning priorities in the Eastern City District Plan.

Local Strategies

The planning proposal is consistent with Burwood Council's Community Strategic Plan 2030 as it will:

- clearly identify sites affected by flooding so that appropriate measures are put in place to ensure the communities safety; and
- ensure the delivery of infrastructure and planning outcomes that have clear and current flood planning information.

Section 9.1 Ministerial Directions

The proposal is consistent with the following relevant section 9.1 Ministerial Directions.

1.1 Industrial & Business Zones

The CFI Map, that the proposed Flood Planning Map is based upon, identifies land zoned for industrial and business purposes. The planning proposal seeks to identify flood affected land and account for land affected by local overland flooding but does not seek to rezone or amend existing planning controls related to either industrial or business land uses.

The identification of flood prone land will facilitate further consideration and implementation of appropriate flood mitigation measures through existing planning controls. This will occur through either a development application or complying development certificate assessment pathways.

3.1 Residential Zones

The CFI Map, that the proposed Flood Planning Map is based upon, covers land zoned for residential purposes. The planning proposal seeks to identify flood affected land and account for land affected by local overland flooding but does not seek to rezone or amend existing planning controls related to residential land uses.

The identification of flood prone land will facilitate further consideration and implementation of appropriate flood mitigation measures through existing planning controls. This will occur through either a development application or complying development certificate assessment pathways.

4.3 Flood Prone Land

This Direction requires a planning proposal to be consistent with and give effect to the NSW Flood Prone Land Policy and the Floodplain Development Manual 2005. The CFI Map has been informed by four flood studies of the local overland flow paths within the Burwood LGA. These studies have been prepared in accordance with both the Flood Prone Land Policy and the Floodplain Development Manual 2005.

The planning proposal seeks to identify land flood affected land. The identification of flood prone land will facilitate further consideration and implementation of appropriate flood mitigation measures through existing planning controls. This will occur through either a development application or complying development certificate assessment pathways.

Furthermore, the direction requires that flood planning controls not be applied to land above the flood planning level. The land identified as being flood effected on the CFI Map is consistent with the proposed flood planning level, which has been informed by the four flood studies.

6.1 Approval and Referral Requirements

The objectives of this direction are to ensure that LEP provisions encourage the efficient and appropriate assessment of development. The proposal does not seek the inclusion of provisions which will require concurrence or consultation with a Minister or other public authority.

The identification of flood prone land will enable the clear identification of flood affected land. This will enable the efficient assessment of development applications and complying development certificates affected by flooding.

7.3 Parramatta Road Corridor Urban Transformation Strategy (PRCUTS)

The CFI Map identifies land that is located within the Burwood-Concord Precinct of the PRCUTS. This direction requires planning proposals to facilitate development within the Parramatta Road Corridor that is consistent with the PRCUTS. The PRCUTS does not

specify this land as being flood affected within either the strategy itself or the Parramatta Road Corridor Implementation Tool kit documents. Likewise, the strategic actions of the PRCUTS do not specifically reference flooding or natural hazard impacts.

Nonetheless, the proposal seeks to identify flood affected land and account for land affected by local overland flooding. This will facilitate further consideration and implementation of appropriate flood mitigation measures through existing planning controls. This will occur through either a development application or complying development assessment pathway.

State environmental planning policies

The proposal is consistent with all relevant state environmental planning policies (SEPPs) being:

- SEPP (Educational Establishments and Child Care facilities) 2017;
- SEPP (Housing for Seniors or People with a Disability) 2004;
- SEPP (Affordable Rental Housing) 2009; and
- SEPP (Exempt and Complying Development Codes) 2008.

SEPP (Exempt and Complying Development Codes) 2008

Development under the Exempt and Complying Development Code SEPP, the principal certifying authority must consider flood affectation prior to the issuing of a complying development certificate. In circumstances when complying development is proposed on a lot at or below the flood planning level, which is defined as a flood control lot⁵, the code requires various measures to be implemented to mitigate flooding impacts to property on the site and on surrounding land.

This planning proposal does not seek to alter the flood planning controls but seeks to clearly identify flood affected properties to facilitate the application of flood planning and development controls to assist in the satisfactory mitigation of flooding impacts.

SEPP (Affordable Rental Housing) 2009

Development under the Affordable Rental Housing SEPP must consider flood affectation, whether through development consent or under a complying development certificate. In circumstances when complying development is proposed on a lot at or below the flood planning level, a flood control lot, the SEPP requires various measures to be implemented to mitigate flooding impacts to property on the site and on surrounding land.

This planning proposal does not seek to alter the flood planning controls but seeks to clearly identify flood affected properties to facilitate the application of flood planning and development controls to assist in the satisfactory mitigation of flooding impacts.

SITE-SPECIFIC ASSESSMENT

Social

The planning proposal will have a positive social impact on the community. The planning proposal will clearly allow for the clear identification of flood affected land through the introduction of a Flood Planning Map into the LEP. This will show land that is at and below the 1:100 ARI Flood Event with 0.5m of freeboard for mainstream and 0.3m of freeboard for

⁵ **flood control lot** means a lot to which flood related development controls apply in respect of development for the purposes of industrial buildings, commercial premises, dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (other than development for the purposes of group homes or seniors housing).

local overland flow. This will facilitate the application of flood mitigation measures which will contribute to the safety for residents and the broader community.

Environmental

Flooding Controls

Council's flooding controls can be found within Clause 6.2 of the Burwood LEP 2012, the Burwood DCP 2012 and Council Engineering Guide for Development.

These flooding controls require that development on flood affected land is compatible with the flooding hazard. This includes requiring the ground floor level to be sufficiently elevated to avoid flooding.

This planning proposal seeks to identify flood affected land through a Flood Planning Map, which will allow for the consistent application of the controls.

The proposal also seeks to account for local overland flooding and not just mainstream flooding.

Economic

The planning proposal will clearly allow for the clear identification of land at and below the flood planning level.

This will facilitate the application of flood mitigation measures which will contribute to the safeguarding of property on flood affected land. It will also safeguard property on surrounding land by preventing downstream affects from development which is not compatible with the flood affectation.

CONSULTATION

Community

Council's indicative timeline proposes a public exhibition period of 14 days. As the planning proposal identifies specific, flood affected properties to be identified in the Burwood LEP 2012, the affected land owner's and occupiers should be directly consulted. To facilitate this direct consultation and allow enough time for community review and comment, it is recommended the proposal be exhibited for 28 days.

Conditions have been inserted into the Gateway determination requiring direct consultation with affected landowners and occupiers and that the proposal be exhibited for 28 days.

Agencies

The planning proposal does not propose consultation with any agencies during public exhibition. As flood identification and mitigation measures are required to be prepared in accordance with the *Floodplain Development Manual* administered by the Environment, Energy and Science Group, it is recommended they be consulted during the exhibition period.

As the flood studies informing the CFI Map were prepared with the assistance of Sydney Water Corporation, they should also be consulted as part of the exhibition of this planning proposal.

TIME FRAME

Council anticipates a 4 month timeframe to make the local environment plan. The Department considers a 9 month time frame to be more appropriate as extensive community consultation is required.

A condition has been included in the Gateway determination to amend the project timeline accordingly. This does not preclude the making of the LEP sooner.

DELEGATION

Council has requested delegation to make the plan as planning proposal authority. As the planning proposal seeks to align the recently completed flood studies and the resulting CFI Map with clause 6.2 in the Burwood LEP 2012, delegation should be granted to Council to make the plan as the proposal is of local significance.

CONCLUSION

It is recommended that the proposal proceed subject to conditions because:

- it gives effect to the Eastern City District Plan and is consistent with the relevant section 9.1 Ministerial Directions and state environmental planning policies;
- it will ensure development that is compatible with the flood exposure;
- it will ensure that land affected by flooding is clearly identified and that the appropriate consideration and measures can then be implemented to ensure the safety of community and property; and
- it would have satisfactory environmental, social and economic impacts.

RECOMMENDATION

It is recommended that the Acting Director Eastern and South District, as delegate of the Minister for Planning and Public Spaces, determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be updated as follows:
 - (a) remove reference in the planning proposal that the Flood Planning Map may change as a result of community consultation; and
 - (b) update reference in the planning proposal from 'overland flooding' to 'local overland flooding' to be consistent with the *NSW Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.
2. Community consultation is required under 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 days;
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016);
 - (c) Council is to directly consult in writing with all affected land owners and occupiers of the land identified within the Consolidated Flood Identification Map as being flood affected; and
 - (d) a copy of the *NSW Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005 is to be included as part of the community consultation package.
3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of the relevant 9.1 Directions:
 - Environment, Energy and Science Group; and
 - Sydney Water Corporation.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The time frame for completing the LEP is to be 9 months following the date of the Gateway determination.

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