

Direct Telephone: (02) 9330 9437
File Reference: D20/32254

13 February 2020

Mr Brett Whitworth, Ms Amanda Harvey and Mr Brendan Metcalfe
Department of Planning, Industry and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr Whitworth, Ms Harvey and Mr Metcalfe,

Response to DPIE Comments on GRLEP 2020

Thank you for the opportunity to resolve a number of issues regarding the draft *Georges River Local Environmental Plan (GRLEP) 2020* Planning Proposal prior to the issuing of a Gateway Determination. The review of the draft *GRLEP 2020* conducted by the Department of Planning, Industry and Environment (DPIE) to date is appreciated.

Council officers have considered the comments provided by the DPIE at the meeting on the 17 January 2020 and the subsequent email and phone discussions. I have no objection to most of the issues raised by the DPIE, as outlined below. Where required, additional justification is currently being prepared to address the issues raised by the DPIE to assist in the review of the draft *GRLEP 2020*.

Council submitted a request for a Gateway Determination on 12 February 2020 and have requested that a Gateway Determination be issued by the end of February 2020 to meet the conditions of the funding agreement under the Accelerated LEP Review Program.

To assist the DPIE in resolving the issues raised to date relating to the Planning Proposal for the draft *GRLEP 2020*, the following information is provided.

1. **DPIE concern – Land use table** – Inconsistencies in the permissibility of land uses between zones have been found and further justification is required in some instances. Additional information for the inclusion/exclusion of certain land uses is to be requested as a condition of the Gateway Determination.

Council response: As requested by the DPIE, Council officers emailed the land use table matrix to the DPIE on 20 January 2020.

Action: If required, DPIE will request additional information for the inclusion / exclusion of certain land uses as a condition of the Gateway Determination.

2. **DPIE concern – Land use terms from the LRMDHC** – The manor houses and multi dwelling housing (terraces) land use terms will be introduced into LEPs when the Low Rise Medium Density Housing Code (LRMDHC) applies to the subject council area if these terms are not already permitted within the relevant LEP. Since Georges River Council has been deferred from the Code until 1 July 2020, the draft *GRLEP 2020* cannot contain the manor houses and multi dwelling housing (terraces) land use terms. The Gateway Determination will include a condition to remove these land uses from the draft *GRLEP 2020*.

Council response: Noted. No additional justification is required to be prepared.

Action: Council will write to the DPIE requesting that the development standards proposed in the draft *GRLEP 2020* for manor houses and multi dwelling housing (terraces) be used when the Code applies.

3. **DPIE concern – Specialised retail premises in the IN2 zone** – Concerns are raised regarding the permissibility of specialised retail premises in the IN2 zone which is inconsistent with LEP practice note PN11-002 which specifies that “bulky goods retailing occurs in a business zone and not in an industrial zone. Such an outcome would ease pressure on employment lands. In 2011, a new objective was added to highlight that the purpose of industrial zones is to support and protect industrial land for industrial uses.” The Gateway Determination will include a condition to prohibit specialised retail premises in the IN2 zone in the draft *GRLEP 2020*.

Council response: Noted. No additional justification is required to be prepared.

Action: The DPIE will prohibit specialised retail premises in the IN2 zone in the draft *GRLEP 2020* as a condition of the Gateway Determination.

4. **DPIE concern – Registered clubs in the RE1 zone** – Concerns are raised regarding the permissibility of registered clubs in the RE1 zone as they are contrary to the objective of the zone and their permissibility is inconsistent with LEP practice note PN11-002. Council is to provide additional information on affected properties to justify the proposed permissibility.

Council response: Noted. Council officers are preparing a list of registered clubs and their existing and proposed zones under the draft *GRLEP 2020*, along with justification for their proposed zoning.

Action: If required, the DPIE may request additional information to be provided by Council as a condition of the Gateway Determination.

5. **DPIE concern – SP2 Community Purposes and SP2 Public Administration** – Concerns are raised regarding the proposed rezoning of SP2 land identified for ‘Community Purposes’ and ‘Public Administration’ to the adjoining zone. Further detail needs to be provided to address the relevant S9.1 Directions and SEPPs in relation to these rezonings.

Council response: Noted. Council officers are preparing additional information on properties currently zoned SP2 Community Purposes and SP2 Public Administration. Council officers are also conducting a consistency check against the relevant S9.1 Directions and SEPPs.

Action: If required, the DPIE may request additional information to be provided by Council as a condition of the Gateway Determination.

6. **DPIE concern – SP2 Hospitals and SP2 Educational Establishments** – Concerns are raised regarding the review of SP2 Health Services Facilities under the *KLEP 2012* and only retaining SP2 Hospitals, and rezoning properties occupied by schools not currently zoned SP2, to SP2 Educational Establishments. Further detail needs to be provided to address the relevant S9.1 Directions and SEPPs in relation to these rezonings.

Council response: Noted. Council officers are preparing additional information on properties currently zoned SP2 Health Services Facilities, SP2 Hospitals and SP2 Educational Establishments, and properties proposed to be zoned SP2 Hospitals and SP2 Educational Establishments under the draft *GRLEP 2020*. Council officers are also conducting a consistency check against the relevant S9.1 Directions and SEPPs.

Action: If required, the DPIE may request additional information to be provided by Council as a condition of the Gateway Determination.

7. **DPIE concern – Rezoning of 815 Forest Road, Peakhurst** – The proposed rezoning from SP2 “Church” to the adjacent R2 zone does not maintain the community’s perception of the church as “a church in a park”. The adjacent RE1 zone should be applied to the site.

Council response: Noted, however further consideration by Council officers identifies the need for a Schedule 1 insertion for the subject site to permit places of public worship on the site to overcome the prohibition of this land use under the proposed RE1 zone. The Schedule 1 clause will also require development standards, such as height and FSR to be specified so that the built form of the church is regulated given it is a private development that will occur in a public zone.

Action: Further justification will be prepared by Council officers to demonstrate that the proposed R2 zone is a more suitable approach for rezoning the site.

8. **DPIE concern – Mapping errors at 821 Forest Road, Peakhurst** – The proposed height of 12m and FSR of 1:1 is missing on the respective maps. The adjoining site at 815 Forest Road has the wrong FSR applied and should be amended to 0.55:1.

Council response: Noted. Council officers have rectified the inadvertent mapping errors and amended the maps accordingly. The amended maps were submitted to the DPIE on 12 February 2020 with the request for a Gateway Determination.

9. **DPIE concern – Drafting issues (e.g. zone objectives)** – Concerns were raised regarding the robustness of the proposed objectives in the context of Land and Environment Court decisions. However, Council officers were advised to retain the existing objectives in the draft *GRLEP 2020* as they are sufficient in communicating the intent of the clauses. In accordance with standard procedures, PCO will make recommendations to the wording of the objectives at the drafting phase.

Council response: Noted.

10. **DPIE concern – Housing Investigation Areas** – The five Housing Investigation Areas (HIAs) should not be up-zoned in this stage of the draft *GRLEP 2020* due to a lack of endorsed evidence. However, no objection is raised to the harmonisation and creation of the hierarchy of residential zones. The deferral of the five HIAs is likely to be conditioned.

Council response: Council's approach to increase housing diversity and create a 'true' medium density residential zone by rezoning land to the R3 Medium Density Residential zone was discussed with the Greater Sydney Commission, the DPIE and other NSW Government agencies as early as March 2019.

The proposed up-zoning of the five HIAs is included in the draft *GRLEP 2020* in response to Council's resolution dated 28 October 2019. These areas are also marked as locations for new housing in "LEP 2020 – Housing & Harmonisation" on the Housing and Neighbourhoods Structure Plan of the Council endorsed *LSPS 2040*. All the necessary investigations and justification for the uplift of these HIAs were undertaken to inform the development of the *LSPS 2040*, including traffic analysis, urban design analysis and testing of proposed development standards, and targeted consultation with the affected and surrounding landowners in September 2019.

Action: Further justification will be prepared by Council officers and this matter will be discussed further at the meeting.

11. **DPIE concern – Hurstville LEP 1994 deferred matters** – Concerns are raised regarding the lack of justification and evidence for the zones and development standards in the draft *GRLEP 2020* for the deferred matters under the *Hurstville LEP 1994*.

Council response: Noted. Council officers are preparing additional information to justify the translation of the deferred matters and the associated development standards under the *HLEP 1994* into the draft *GRLEP 2020*.

Action: If required, the DPIE may request additional information to be provided by Council as a condition of the Gateway Determination.

12. **DPIE concern – Lot width requirements for residential development** – Concerns are raised that the proposed lot width requirements for residential development in *Clause 4.1B Minimum lot sizes and special provisions for certain dwellings* are too onerous and may result in a large number of DAs requiring Clause 4.6 variations due to



existing non-compliances. The minimum lot width requirements should be removed from the draft *GRLEP 2020*. This is likely to be conditioned.

Council response: The minimum lot size requirements have been introduced in the draft *GRLEP 2020* in response to the *LSPS 2040* commitment and community feedback to protect the character of residential suburbs and develop a hierarchy of residential zones. Rigorous modelling and testing was conducted to inform the development of these controls. Council officers are preparing additional information to justify the introduction of the minimum lot width requirements in the draft *GRLEP 2020*.

Action: Further justification will be prepared by Council officers and this matter will be discussed further at the meeting.

13. **DIPE concern – Landscaped area definition** – *Clause 6.12 Landscaped areas in certain residential and environmental protection zones* contains a customised definition for calculating landscaped area. The *Standard Instrument LEP* (SILEP) definition must not be altered. Alternatively, the local provision should be reviewed to utilise a non-SILEP term, such as deep soil. This will mean a review of the landscaped area requirement. This is likely to be conditioned.

Council response: At its meeting on 6 February 2020, the Georges River Local Planning Panel (LPP) considered the Planning Proposal for the draft *GRLEP 2020* and resolved to forward the *GRLEP 2020* for a Gateway Determination subject to amendments, including deleting the landscaped area and deep soil area definitions within Clause 6.12 (7) so that the SILEP definition of landscaped area applies.

Action: In accordance with the LPP's resolution, the draft *GRLEP 2020* submitted for a Gateway Determination was amended to delete the customised landscape area definition and instead refer to the SILEP definition. Accordingly, no further action is required.

14. **DIPE concern – Landscaped area requirements** – With the introduction of *Clause 6.12 Landscaped areas in certain residential and environmental protection zones*, Council must consider the impact of existing non-compliances, including the anticipated number of Clause 4.6 variations caused by existing non-compliances to the proposed landscaped area requirements.

Council response: The landscaped area local provision has been introduced in the draft *GRLEP 2020* as a direct response to the Georges River community's request for greater landscaping to be provided in new residential developments. The *LSPS 2040* commits to a future Housing and Neighbourhoods vision that has landscaping to soften buildings, shade paved areas, reduce heat, minimise wind and bring life and greenery to local areas. With consideration of the adoption of the SILEP "landscaped area" definition, the proposed percentage requirements for landscaped area are less than the existing Hurstville DCP, Kogarah DCP and Codes SEPP requirements. Council officers are preparing additional information to justify the introduction of the minimum landscaped area requirements in the draft *GRLEP 2020*.

Action: Further justification will be prepared by Council officers and this matter will be discussed further at the meeting.

15. **DPIE concern – Foreshore clauses** – The foreshore related clauses (e.g. *Clause 6.5 Foreshore area and coastal hazards and risks* and *Clause 6.6 Foreshore scenic protection area*) need to be strictly assessed against S9.1 Direction – 2.2 Coastal Management. The draft *GRLEP 2020* must have the same intent as the *Coastal Management Act* and SEPP, and must not contradict the requirements of these legislations.

Council response: Noted. Council officers are preparing additional information to ensure the proposed foreshore related clauses do not contradict the requirements of the relevant Acts, S9.1 Directions and SEPPs.

16. **DPIE concern – Flood planning requirements** – The flood planning local provision is too onerous with extensive flood planning areas mapped. The DPIE will allow the retention of the existing Flood Planning Map in the *KLEP 2012* given that it satisfies S9.1 Direction considerations and is consistent with the DPIE's model clause for Flood Planning. However, all other flood layers and the PMF Map will need to be removed. This is likely to be conditioned.

Council response: Noted. Council has no objection to the adoption of the DPIE's model clause for Flood Planning.

Action: If required, DPIE will insert a condition in the Gateway Determination to delete the new proposed flood layers and PMF Map. The existing Flood Planning Map in the *KLEP 2012* is to be translated into the draft *GRLEP 2020*.

17. **DPIE concern – Riparian Land and Watercourses** – Concern was raised regarding the integration of riparian lands and watercourses with other foreshore area controls in *Clause 6.5 Foreshore area and coastal hazards and risks*. The proposed Riparian Lands and Watercourses Map applies to a 40m buffer from the bank of the Georges River, which is significantly greater than the extent of the existing foreshore area. As such, the Riparian Lands and Watercourses local provision needs to be its own standalone clause so the requirements are not as stringent as the FBL controls. This is likely to be conditioned.

Council response: Noted.

Action: If required, DPIE will insert a condition in the Gateway Determination for references to the Riparian Lands and Watercourses Map be removed from *Clause 6.5 Foreshore area and coastal hazards and risks* and inserted into a standalone clause.

18. **DPIE concern – Dual key dwellings** – No objections are raised in principle to *Clause 6.13 Development for the purposes of dual key dwellings in Zones R2 and R3*. However, concerns are raised regarding the introduction of the new land use term "dual key dwellings". Further information can be required as a condition of the Gateway



Determination if necessary or addressed during the legal drafting of the draft *GRLEP 2020*.

Council response: Noted.

Action: If required, DPIE will insert a condition in the Gateway Determination to require further information, otherwise leave the wording of the clause as an issue to be resolved at the drafting stage.

19. **DPIE concern – Design excellence and sustainability clauses** – No concerns are raised regarding the intent of *Clause 6.10 Design excellence* and *Clause 6.11 Environmental sustainability in certain business, industrial and residential zones*. However, concerns will be raised by the legal branch as the LEP should not contain any procedural requirements, such as a requirement for the development to be reviewed by an urban designer or a registered architect or for a statement of verification to be submitted for environmentally sensitive design. A condition may be placed in the Gateway Determination to require these clauses to be replaced by a plain English explanation for the purpose of exhibition, such as “there will be a review process”, rather than providing the draft *GRLEP 2020* wording.

Council response: Noted.

Action: If required, DPIE will request via a condition of the Gateway Determination that the draft clauses be replaced with plain English explanations for the purpose of public exhibition.

20. **DPIE concern – Draft LEP instrument for exhibition** – Given the concerns regarding the wording of some of the clauses in the draft *GRLEP 2020*, questions have been raised regarding whether the draft instrument itself should be placed on public exhibition despite the merits of having the draft instrument available.

Council response: Noted. Council is of the opinion that the draft *GRLEP 2020* instrument should be placed on public exhibition as it provides the community with a better understanding of the planning controls and the requirements for development in a format that is consistent with the existing LEPs. The exhibited draft instrument can contain a disclaimer stating that the wording of the clauses are subject to change as a result of legal drafting by the DPIE and the PCO.

Action: If required, DPIE will advise Council whether the draft *GRLEP 2020* instrument is allowed to be placed on public exhibition with the Planning Proposal.

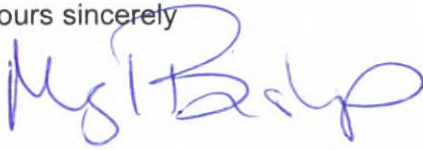
Further to my discussion with Amanda, I would appreciate an opportunity to meet with the DPIE to discuss the concerns outlined above in this letter. This meeting will allow further discussion on the key issues such as the Housing Investigation Areas, the minimum lot width development standard and the landscaped area local provision. We will be in touch to arrange a suitable meeting time.



I will also provide a follow up letter early next week prior to our meeting that includes the additional information identified above.

Should you have any queries regarding the content of the draft *GRLEP 2020* please do not hesitate to contact Stephanie Lum, Coordinator Strategic Planning, on 9330 9437 or Anne Qin, Strategic Planner/Urban Designer, on 9330 6266.

Yours sincerely



Meryl Bishop
Director Environment and Planning

