



Planning,  
Industry &  
Environment

IRF20/4034

# Greater Sydney Place and Infrastructure

---

Georges River Local Environment Plan 2021

September 2021



Published by NSW Department of Planning, Industry and Environment

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)

Title: Greater Sydney Place and Infrastructure

Subtitle: Georges River Local Environment Plan 2021

---

© State of New South Wales through Department of Planning, Industry and Environment 2021 You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing [August 21] and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

# Contents

|          |                                                                                          |           |
|----------|------------------------------------------------------------------------------------------|-----------|
| <b>1</b> | <b>Introduction.....</b>                                                                 | <b>2</b>  |
| 1.1      | Overview.....                                                                            | 2         |
| 1.1.1    | Georges River Local Environment Plan 2021 and Accelerated Housing Planning Proposal..... | 2         |
| 1.1.2    | Georges River Local Planning Panel as the Planning Proposal Authority .....              | 2         |
| 1.1.3    | Site description .....                                                                   | 3         |
| 1.1.4    | Purpose of plan.....                                                                     | 4         |
| 1.1.5    | State electorate and local member.....                                                   | 5         |
| <b>2</b> | <b>Gateway determination and alterations .....</b>                                       | <b>8</b>  |
| <b>3</b> | <b>Public exhibition and post-exhibition changes .....</b>                               | <b>8</b>  |
| 3.1      | Community submissions .....                                                              | 8         |
| 3.2      | Advice from agencies.....                                                                | 21        |
| 3.3      | Post-exhibition changes.....                                                             | 26        |
| 3.3.1    | the Panel's post-exhibition amendments.....                                              | 26        |
| 3.3.2    | the Department's post-exhibition amendments .....                                        | 32        |
| 3.3.3    | Justification for post-exhibition changes.....                                           | 39        |
| <b>4</b> | <b>Department's Assessment .....</b>                                                     | <b>39</b> |
| 4.1      | Detailed Assessment .....                                                                | 40        |
| <b>5</b> | <b>Drafting.....</b>                                                                     | <b>48</b> |
| <b>6</b> | <b>Recommendation.....</b>                                                               | <b>48</b> |
|          | Appendices .....                                                                         | 49        |
|          | Attachments .....                                                                        | 49        |

# 1 Introduction

## 1.1 Overview

### 1.1.1 The concurrent finalisation of two planning proposals

This report package includes the finalisation of two separate planning proposals including:

- Georges River Local Environmental Plan 2021; and
- Accelerated Housing Planning Proposal.

Due to the timing of the finalisation requests for the Georges River Local Environmental Plan 2021 and Accelerated Housing Planning Proposal, both will be finalised concurrently.

This report will provide the finalisation assessment of the Georges River Local Environmental Plan 2021. The finalisation assessment for the Accelerated Housing Planning Proposal can be found at **Attachment Report - Accelerated Housing**.

### 1.1.2 George River Local Environmental Plan 2021

The planning proposal seeks to make a new comprehensive Local Environmental Plan (LEP) for the amalgamated Georges River Local Government Area (LGA) – the Georges River Local Environmental Plan 2021 (the draft Georges River LEP 2021) by:

- consolidating the Hurstville Local Environmental Plan 2012 (Hurstville LEP 2012) and Kogarah Local Environmental Plan 2012 (Kogarah LEP 2012), which are collectively referred to as the Legacy LEPs; and
- incorporate one of three deferred sites from the Hurstville LEP 2012 into the draft Georges River LEP 2021.

The other two sites will remain zoned under the Hurstville Local Environment Plan 1994 (Hurstville LEP 1994).

This planning proposal is the first stage of implementing the Georges River Local Strategic Planning Statement 2040 (the LSPS) vision for the LGA. The LSPS anticipates that this staged approach will be as follows:

- **Stage 1 - GRLEP 2021** – Housing and Harmonisation (this planning proposal)
- **Stage 2 - GRLEP 2021** – Housing Choice (Accelerated Housing Planning Proposal)
- **Stage 3 - GRLEP 2022** – Jobs and Activation
- **Stage 4 - GRLEP 2025 and beyond** – Further housing opportunities

This planning proposal is primarily a consolidation of these Legacy LEPs and a deferred site whilst delivering approximately 650 new dwellings through five Housing Investigation Areas (HIA).

### 1.1.3 Georges River Local Planning Panel as the Planning Proposal Authority

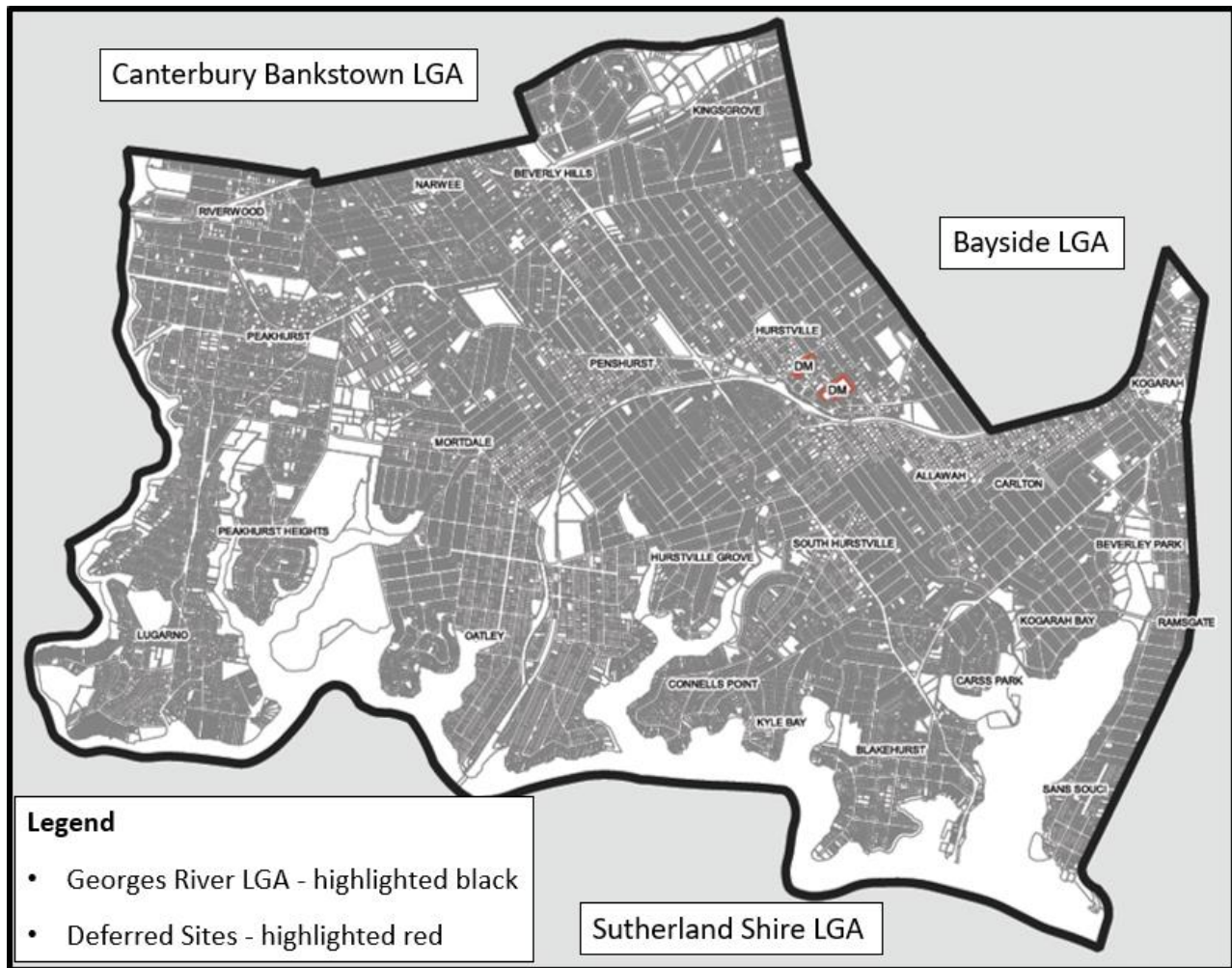
On 25 November 2019, Council considered the planning proposal to proceed to the Department for a Gateway determination.

However, Council was unable to form a quorum due to the Councillors declaring pecuniary conflicts of interest.

In response, the Acting General Manager sub-delegated Council's functions as the planning proposal authority (PPA) to the Georges River Local Planning Panel (the Panel). Consequently, the responsibilities that Council were anticipated to undertake with respect to the plan making process for the Georges River LEP 2021 have been delegated to the Panel.

### 1.1.4 Site description

The planning proposal applies to the land within the Georges River LGA identified in **Figure 1**.



**Figure 1** – Land to which the planning proposal applies (source: Georges River Council)

The land within the Georges River LGA that are not the subject of this planning proposal are as follows (**Figure 2**):

- Hurstville Civic Precinct; and
- the Hurstville Westfield site.

These two sites will remain zoned under the Hurstville LEP 1994.



**Figure 2:** Map of sites deferred from Hurstville LEP 2012, and still subject to Hurstville LEP 1994

### 1.1.5 Purpose of plan

This planning proposal seeks to:

- implement the vision of the LSPS, which was assured by the Greater Sydney Commission (GSC) on 5 March 2020;
- provide a consistent approach to planning and development across Georges River LGA in response to the amalgamation of Kogarah City Council with the City of Hurstville in 2016;
- give effect to the South District Plan (the District Plan) in accordance with Section 3.8 of the *Environmental Planning and Assessment Act 1979* (the Act).

The NSW Government provided funding to Georges River Council to accelerate preparation of the new LEP by mid-2021 in order to meet Council's obligation under the Act.

The planning proposal states that to achieve these objectives, principles have been applied which include:

- achieve equity across the LGA through the harmonisation process, particularly in respect to development potential and the management of environmental hazards and risks;
- retain existing controls where the status quo can be maintained;
- develop a hierarchy of residential zones to ensure development typologies reflect the objectives of the respective zone, including a 'true' medium density residential zone;
- protect the amenity and local character of low density residential zoned areas;
- provide high density residential areas with opportunities for greater activation;

- facilitate employment growth in centres, particularly in mixed use zones;
- protect industrial zoned land whilst allowing greater land use and development flexibility;
- promote good design and environmentally sustainable practices in larger developments;
- enhance and protect the natural environment, especially in the foreshore localities along the Georges River;
- formalise key infrastructure uses such as schools and hospitals; and
- adopt the model local provisions for Standard Instrument LEPs as provided by the DPIE where applicable.

### 1.1.6 State electorate and local member

#### **Members of the Federal Parliament**

The planning proposal falls within the following federal electorates (federal member of parliament):

- Banks (Hon David Coleman MP);
- Barton (Hon Linda Burney MP); and
- Cook (Hon Scott Morrison MP).

The issues raised by members of the Federal Parliament are summarised below. The Panel's and Department's responses to these issues are discussed in **Section 3.1 – Submissions during exhibition** of this report.

#### **Submission by the Hon David Coleman MP**

A submission was received from the Hon David Coleman MP, which:

- Requested extension of the public exhibition period until such time that social distancing laws are relaxed to allow for residents to meet and discuss their views on the proposed changes; and
- noted that Canterbury Bankstown Council provided a significant extension on their exhibition period for their Comprehensive LEP to allow residents to have their say.

#### **Members of the NSW Parliament**

The planning proposal falls within the following state electorates (state member of parliament):

- Rockdale (Hon Stephen Kamper MP);
- Kogarah (Hon Chris Minns MP);
- Oatley (Hon Mark Coure MP); and
- Lakemba (Hon Jihad Dib MP).

The issues raised by members of the NSW Parliament are summarised below. The Panel's and Department's responses to these issues is discussed in **Section 3.1 – Submissions during exhibition** of this report.

#### **Submissions and Representations by the Hon Mark Coure MP**

The Hon Mark Coure MP made several written correspondences on the draft Georges River LEP 2021. This included submissions and representations on behalf of community members, which raised the following:

Constraints to making a submission due to social distancing laws:

- that the public exhibition period should be extended until such time that social distancing laws are relaxed to allow for residents to meet and discuss their views on the proposed changes;
- accessibility to and transparency of information is hindered due to lack of locations to be able to access hard copies of information, not all residents are technologically savvy enough to find the information online. Some residents do not have internet connection and as such this process of exhibition is unfair to them; and
- inadequate time available for residents to provide comment on the proposed acquisition of 11-21 Monaro Ave, Kingsgrove for the expansion of the Peter Low Reserve. Proposed removing this item from this LEP amendment and reconsidering it in the Stage 2 LEP amendment or at such time that social distancing laws are relaxed, and residents can meet to discuss the issue together and with Council.

Foreshore Scenic Protection Area:

- concerns that removal of the Foreshore Scenic Protection Area (FSPA) from areas in Riverwood, Lugarno, Peakhurst, Peakhurst Heights, Mortdale and Oatley will lead to:
  - increased urban density in these areas;
  - adverse impacts to residential amenity;
  - adverse environmental impacts;
  - increased traffic and congestion;
  - lack of existing infrastructure to withstand potential future residential development (particularly schools);
  - loss of privacy; and
  - detrimental impacts on property value.
- proposes increasing the landscaping requirements in the FSPA to 50% to increase large garden areas, urban tree canopy and green space;
- reducing the landscaping area will have detrimental impacts on the protection of endangered ecological communities and heritage listed trees; and
- requests that Council withdraw the proposed amendment to reduce the FSPA.

Procedural matters:

- requests that the Georges River Local Housing Strategy (the LHS) be released for community consultation first and then use the findings of this to inform the LEP Amendments; and
- believes that the decision on the LEP should not be delegated to the Local Planning Panel but should remain with the elected Councillors.

Objections to rezoning the South Hurstville HIA:

- objects to the proposed rezoning of the Esplanade/Mall Block in South Hurstville from Medium Density Residential (R3) to R4 High Density Residential (R4), because:
  - this will create unacceptable over-development;
  - increased traffic and congestion; and
  - impact on the residential amenity of the area.

**Entertainment facilities in certain zones and precincts:**

- objects to the addition of restaurants, cafes and bars as permitted uses within the R4 zone, because:
  - it will increase anti-social behaviour;
  - of impact amenity in these existing quiet residential areas; and
  - that each of the suburbs of Georges River are already well serviced by these types of development.
- objects to the addition of function centres and small bars to the B6 Enterprise Corridor (B6) zoning as this will increase anti-social behaviour in areas that are within proximity of quiet residential areas; and
- objects to the addition of entertainment facilities to the RE1 Zone at Jubilee Oval and Kogarah Park, because:
  - Kogarah Park is overburdened with constraints and is at capacity with uses on site;
  - an entertainment facility will increase the burden on traffic congestion and parking, endangering school students at Carlton South Public School; and
  - the need for the entertainment facility is negated by the proximity of the site to St George Leagues Club.

**Monaro Avenue dwelling acquisition for Peter Low Reserve expansion:**

- objects to the acquisition of houses at Monaro Avenue for the expansion of Peter Low Reserve as this will have the following impacts:
  - the proposed McGregor Street for on-street parking is too narrow to accommodate the increased on-street parking;
  - increased pressures on on-street parking and congestion;
  - uncertainty as to how the park will be used in the future, concerns about potential for future development; and
  - negative impact on property values.

**Submissions by the Hon Chris Minns MP**

The Hon Chris Minns MP made several written correspondences on the draft Georges River LEP 2021. This included submissions and representations on behalf of community members, which raised the following:

**Constraints to making a submission due to social distancing laws**

- inadequate time for residents to provide comment on the proposed acquisition of 11-21 Monaro Ave, Kingsgrove for the expansion of the Peter Lowe Reserve.  
  
The correspondence proposed removing this item from this LEP amendment and reconsidering it in the Stage 2 LEP amendment or at such time that social distancing laws are relaxed and residents can meet to discuss the issue together and with Council; and
- extension of public exhibition period until such time that social distancing laws are relaxed to allow for residents to meet and discuss their views on the proposed changes.

**Meetings with Lobbyists and Political Donations**

To the team's knowledge, 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

On 10 March 2020, the Gateway determination was issued, which considered that the planning proposal should proceed subject to conditions. This includes a Schedule of Conditions which required several amendments and clarifications prior to public exhibition.

The Department is satisfied that the Panel has complied with the requirements of the Gateway determination, including the Schedule of Conditions.

## 3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 1 April 2020 to 31 May 2020.

A total of 1,153 community submissions were received.

On 25 and 26 June 2020, the Panel considered the submissions received in the post-exhibition report and an addendum post-exhibition report. This addendum report identified four mapping errors not included in the initial post-exhibition report. The Panel resolved to:

- make several post-exhibition amendments which are discussed further in **Section 3.3.1 – the Panel's post-exhibition amendments** of this report; and
- submit the planning proposal to the Department for finalisation.

On 30 June 2020, the planning proposal was submitted to the Department, requesting finalisation under Section 3.36 of the *Environmental Planning and Assessment Act 1979* (the Act).

### 3.1 Community submissions

There were 1,153 submissions received from individuals and organisations, including from a Member of Federal Parliament and two Members of NSW Parliament. Two petitions with a total of 310 and 1,220 signatures were also received.

The key issues raised in submissions objecting to the proposal included the following:

- objections to reducing the existing FSPA;
- requests for increased landscaping requirements;
- new open space acquisitions;
- a minimum non-residential FSR in various Centres;
- various requests for rezonings to increase development potential;
- consultation process and timings;
- heritage conservation;
- prohibiting Places of Public Worship in the R2 zone;
- requests for amendments to floor space ratio provisions for dwelling houses;
- requests for amendments to the minimum lot size for dual occupancies;
- objections to the proposed Residential Zones Hierarchy rezonings;
- objections to the proposed HIA rezonings;
- objections to permitting entertainment facilities at Netstrata Jubilee Stadium Precinct;
- objections to permitting entertainment facilities in certain zones;
- objections to proposed changes in the IN2 Light Industrial zone; and
- objection to the proposed rezoning of hospitals to an infrastructure zone.

The Department considers that the Panel has appropriately responded to all community submissions. The Panel's and Department's responses to each of the key issues raised in the community submissions are discussed below:

#### Objections to reducing the existing FSPA

Community submissions were received which raised concern that reducing the FSPA in former Hurstville LGA areas would increase development potential, causing:

- negative natural environmental impacts, including:
  - loss of biodiversity;
  - reduced landscaping areas; and
  - loss of trees and vegetation.
- a loss of character and amenity;
- exacerbation of existing traffic issues;
- increased pressure on infrastructure;
- a decrease in property value for neighbours;
- soil erosion from loss of vegetation due to the topography; and
- increased impacts from the urban heat island effect due to loss of vegetation.

Community submissions were received which raised concern that some aspects of the FSPA mapping in the planning proposal were misleading, because:

- it included parts of the waterway where the existing maps did not; and
- that some aspects of the amendments were not made clear enough in the planning proposal documentation.

Community submissions were received which considered that the justification supporting a reduced FSPA was insufficient, noting the development viability was unachievable due to excavation costs required for redeveloping predominately sloping sites.

#### *Panel's Response*

In response to the submissions the Panel noted that though the amendments to the FSPA were informed by Council's 'Foreshore Strategic Directions Paper' the proposal should be amended to:

- revise the wording of draft clause 6.7 - Foreshore Scenic Protection Area to insert the words "avoids and minimise" disturbances on flora and fauna and insert the word "enhancement" of native vegetation and habitat;
- retain the existing FSPA as identified by the Hurstville LEP 2012 Foreshore Scenic Protection Area Map;
- retain the proposed FSPA amendments in the former Kogarah LGA as exhibited; and
- that Council, as part of the preparation of the draft Local Environmental Plan in 2021/2022, further define the role, mapped extent and zoning of FSPA, in both the former Hurstville and Kogarah LGAs.

The post-exhibition amendments made by the Panel in response to these submissions are discussed in **Section 3.3.1 – the Panel's post-exhibition amendments** of this report.

*Department's Assessment:*

The Department considers the Panel's response to be adequate, noting that several post-exhibition amendments in response to the community and agency submissions have been made. These include restoring the application of the FSPA to be consistent with the Hurstville LEP 2012.

Requests for increased landscaping requirements

Community submissions were received which raised concern that the proposed landscaping requirements were insufficient to retain large trees or protect existing areas of biodiversity.

These submissions also raised the importance of vegetation in creating an aesthetic character and significantly beautifying the LGA. These submissions noted this was of particular importance for areas zoned for low and medium density residential development.

*Panel's Response*

In response to these concerns, the Panel resolved to amend the planning proposal to:

- increase the minimum landscaping requirements for dual occupancies in the FSPA areas from 25% to 30% and in non-FSPA areas from 20% to 25%. The Panel considers that this ensures that new developments for dual occupancy are developed with increased planting and vegetation; and
- introduce new 'clause 6.19 - Tree protection and landscaping in zones R2 and R3'. The Panel considers the introduction of this local provision:
  - ensures any development undertaken on land in the R2 and R3 zones maintains and enhances the landscaped character of the neighbourhood and contributes to the tree canopy of the LGA; and
  - responds to the key issues raised by the community concerning the loss of tree canopy and the gradual diminishment of natural characteristics as a result of recent development activities.

The post-exhibition amendments made by the Panel in response to these submissions are discussed in **Section 3.3.1 – the Panel's post-exhibition amendments** of this report.

*Department's Assessment:*

The Department considers the Panel's response to be adequate, noting that several post-exhibition amendments in response to the community submissions have been made.

The Department has also made further post-exhibition amendments in response to submissions. These are discussed in **Section 3.3.2 – the Department's post-exhibition amendments** of this report.

New Open Space Acquisitions

Community submissions were received which raised concern with the acquisition of residential properties, including at:

- 11-21 Monaro Avenue, Kingsgrove;
- 7 Hedley Street and 13-15 Keith Street, Peakhurst; and
- 26-30 Culwulla Street, Hurstville.

The concerns raised in the community submissions include:

- the acquisition of residential properties is not justified as no existing or proposed high density residential development is nearby;
- acquisition for open space should be done in areas closer to high density housing;
- necessity of additional public open space given the proximity of existing public parks;

- increases in noise, waste and pollution due to more visitation to the parks;
- increased usage of on-street parking;
- increased traffic congestion;
- uncertainty as to how the open spaces will be used in the future, with concerns expressed about potential future development;
- negative impact on property values;
- stress placed on owners of homes to be acquired, including financial hardship and stress the acquisition would have on the owners of these properties as owners will lose their properties and rights to develop their properties;
- increased risk of crime and anti-social behaviours; and
- lack of information and communication between Council and residents of the proposed acquisition process.

#### *Panel's Response*

In response, the Panel noted that:

- when land acquisition is required, relevant negotiations will be conducted in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. This includes compensation and hardship provisions, which if demonstrated, obliges the purchase of the property or removal of the designation to purchase within 90 days;
- the proposed acquisitions on Culwulla Street, South Hurstville is consistent with the LSPS, because it:
  - is located near a HIA which is proposed to be rezoned from R2 to R3;
  - this area also immediately adjoins the existing high density residential areas fronting King Georges Road; and
  - the acquisition of these properties will enable the creation of a larger pocket park that offers improved access between Culwulla and Joffre Streets.
- the proposed acquisitions at Hedley Street and Keith Street, Peakhurst are consistent with the LSPS, because they:
  - are located near a HIA which is proposed to be rezoned from R2 to R3; and
  - have been selected for acquisition for the purpose of expanding Peakhurst Park, which will enable additional activities to be provided in the existing park and improve access to the park, particularly for the residents living to the east of Peakhurst Park.

In response to community submissions, the Panel made a post-exhibition amendment to remove the proposed acquisitions at Monaro Avenue, Kingsgrove. This post-exhibition amendment is discussed further in **Section 3.3.1 – the Panel's post-exhibition amendments** of this report.

#### *Department's Assessment:*

The Department considers the Panel's response to be adequate, noting:

- that the sites to be retained:
  - are located near:
    - a HIA, which proposes to rezone R2 to R3;
    - infrastructure and social services, such as schools, community facilities, existing public open space and public transport; and
    - existing high density residential areas fronting King Georges Road.

- deliver on the objectives of the LSPS to provide recreational and open space opportunities for the community;
- are consistent with Council's Open Space, Recreation and Community Facilities Strategy 2019-2036; and
- offer improved access into existing public open spaces.
- the post-exhibition change to remove the proposed acquisition of 11-21 Monaro Avenue, Kingsgrove is in response to community submissions. The Department notes that Council will continue to pursue and investigate all opportunities to provide such open space, including the provision of additional land in the vicinity of Peter Low Reserve as part of future planning proposals.

The Department encourages Council to investigate all opportunities to provide public open space in consultation with the community.

#### Prohibiting Places of Public Worship in the R2 zone

Submissions raised support for the prohibition of Places of Public Worship in the R2 zone stating that this use should be undertaken on sites that can accommodate the additional traffic generated and have less impacts on residential amenity.

Submissions raised the following comments:

- inadequate assessment, evidence or justification for the prohibition of places of public worship in the R2 zone;
- no evidence that places of public worship cause an unacceptable risk to safety, security and privacy;
- potential amenity issues, such as parking, can be managed through the development assessment process;
- results in an inflexible framework with restrictions to develop new churches in the R2 zone or the ability to redevelop/expand existing ones;
- places of public worship are generally low impact uses as the majority operate for short periods during a limited part of the week at off peak times and are therefore unlikely to affect peak traffic, and potential for adverse privacy and overlooking impacts is limited; and
- places of public worship are an important social infrastructure that supports the community.

Submissions were also received which requested the proposed Schedule 1 – Additional Permitted Uses (Schedule 1) be updated to include existing places of public worship that had been omitted. These included:

- the Lugarno Anglican Church; and
- the Oatley Gospel Chapel.

#### *Panel's Response*

In response, the Panel noted that the draft Georges River LEP 2021 seeks:

- to retain the permissibility of all existing places of public worship in the R2 zoned areas through Schedule 1 of the LEP. The Panel considers that this approach will:
  - not restrict future expansion or redevelopment of these uses on the identified land; and
  - prevent the establishment of new venues of places of public worship in existing low density residential areas.

- to continue permitting with consent places of public worship in the R3, R4 and all business zones, which are better able to accommodate the establishment of new places of public worship.

In response, the Panel has made post-exhibition amendments to include additional places of public worship found in the R2 zone in Schedule 1. This post-exhibition amendment is discussed further in **Section 3.3.1 – the Panel’s post-exhibition amendments** of this report.

*Department’s Assessment:*

The Department considers the Panel’s response to be adequate, noting that:

- the inclusion of existing places of public worship in R2 zoned areas as part of Schedule 1 will ensure the ongoing upkeep and development of churches is appropriately facilitated; and
- this proposal encourages the establishment of new places of public worship in areas capable of supporting this land use to avoid amenity impacts.

A Minimum Non-Residential FSR in various Centres

Community submissions were received which raised concern with implementing a non-residential FSR in the commercial centres, noting that there was surplus retail space available in existing centres. Several submissions noted this was a particular concern in the Hurstville City Centre.

*Panel’s Response*

In response, the Panel noted that the Georges River Commercial Centres Strategy outlines:

- that there is insufficient space under the current minimum non-residential FSR to accommodate future commercial growth expected in the LGA; and
- the proposed non-residential FSR is being imposed to stem the loss of employment floor space in Georges River commercial centres to infill mixed use residential developments.

*Department’s Assessment:*

The Department considers the Panel’s response adequate, noting:

- the non-residential FSR controls for the business zoned land of each centre is justified by the Georges River Commercial Centres Strategy, which applies the minimum non-residential FSR on a hierarchy of existing employment floor space per centre. This reflects the degree by which commercial floor space needs to be protected;
- the protection of employment generating floor space in commercial centres allows residents to work near their homes;
- it will provide for the businesses and services needed to support neighbouring residential development; and
- it locates employment floor space near existing infrastructure and public transport, facilitating the LSPS’s objective for a 30-minute city.

Various requests for a rezoning to increase development potential

Community submissions were received which made various requests for rezonings to increase development potential. These various requests, include:

- various general requests for spot rezonings;
- R3 zoned land be ‘upzoned’ to R4 and amend the FSR in R4 zones to 1.25:1;
- provide uplift in commercial centres and Riverwood Local Centre to increase housing opportunity; and

- the draft Georges River LEP 2021 should reflect the Beverly Hills Masterplan.

Community submissions raised requests for spot rezonings on their sites to increase development standards or land use permissibility. The submissions justified these rezonings as they would:

- increase housing supply and choice;
- are located near existing infrastructure and public transport; and
- are near existing centres, providing for amenity and services.

*Panel's Response:*

In response to these requests, the Panel noted:

- that the planning proposal is the first stage to implementing a comprehensive planning scheme for the Georges River LGA. This planning proposal focuses on housing and harmonisation to ensure a single, consistent approach is applied to planning and development across the LGA;
- in accordance with the housing investigation program specified by the LSPS, this planning proposal includes the 'upzoning' of five HIAs to deliver additional housing. Future housing investigation will be conducted in LEP 2025 and beyond in the locations identified by the LSPS Structure Plan;
- any spot rezoning requests outside of the LSPS housing growth areas should follow the formal planning proposal process;
- zoning and development standards of the R4 zone will be reviewed in the following stages of the LEP Program;
- the roles and functions of all 48 commercial centres within the LGA, including the associated planning controls, will be reviewed as part of the future LEP 2022; and
- the Beverly Hills Masterplan needs to be put on exhibition for public comment and adopted by Council before it can be reflected in the LEP<sup>1</sup>.

*Department's Assessment:*

The Department considers the Panel's response to be adequate, noting that:

- the planning proposal was primarily seeking a harmonisation of the Legacy LEPs and did 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 agency comment.

Consultation process and timings

Community submissions were received which raised concerns with the consultation process for the draft Georges River LEP 2021. The concerns raised by the submissions included:

- requests amendments to the timing of the exhibition due to availability of information during social distancing lockdowns, being:

<sup>1</sup> The draft Beverly Hills Masterplan was placed on public exhibition from 28 July to 28 September 2020.

- social distancing laws prevent residents to meet and discuss their views on the proposed changes;
- accessibility to and transparency of information is hindered due to lack of locations to be able to access hard copies of information as not all residents are technologically savvy enough to find the information online; and
- some residents do not have internet connection and as such an online exhibition process is unfair to them.
- concerns that the community were not notified of the proposed draft Georges River LEP 2021 changes during the LSPS consultation;
- requests that the housing strategies be placed on exhibition prior to the draft Georges River LEP 2021;
- concerns over the Planning Proposal Authority being the Panel and not the elected Council; and
- requests for a public hearing.

#### *Panel's Response*

In response to these concerns, the Panel noted:

- that greater assistance has been provided to residents in making a submission during the COVID 19 lockdown, including:
  - extension of exhibition period from 28 days to 61 days;
  - creation of a 30 minute informational video;
  - creation of various FAQs sheets responding to key topics;
  - hosting three digital webinars for Q&As with residents; and
  - posting hardcopies to residents who asked.
- this planning proposals gives effect to the LSPS, with the exhibition of this planning proposal being separate to that of the LSPS consultation;
- that the Department had outlined that the draft status of the LHS and LSPS does not prevent the draft Georges River LEP 2021 from being progressed;
- Council has outlined that the elected Councillors were unable to make a decision on the LEP as the PPA due to pecuniary interests. As a result, the PPA functions were delegated to the Panel as the most expedient option to ensure the progression of the planning proposal to meet the 30 June 2020 deadline. The Panel members consisted of four experienced planning professionals qualified to make judgement and deliberate on the recommended amendments within the draft Georges River LEP 2021; and
- that a public hearing was not required under the conditions of the Gateway Determination.

#### *Department's Assessment*

The Department considers the Panel's response adequate, noting that:

- the exhibition period of the planning proposal was extended from the minimum 28 days to 61 days to further assist the community consultation during the COVID-19 Pandemic;
- the finalisation of the Georges River LEP 2021 does not require the LHS to be endorsed. Rather, subsequent planning proposals can implement the recommendations of the approved LHS;
- the delegation to the Panel by Council of its functions as the PPA is in accordance with the relevant legislation;

- while observing NSW's public health guidelines, the Department continues to work in its normal capacity to assist Council as appropriate, this includes completing the draft Georges River LEP 2021.

In this regard, the NSW Government has made changes to Section 10.18 of the Act to remove any requirement on Councils to make planning documents available for inspection at a physical location. The changes were made on 25 March 2020 and became effective immediately.

Councils may now address these legal obligations by making the documents available on the NSW Planning Portal or any other website approved by the Department's Planning Secretary. This includes Council's website.

This approach is also consistent with the broader NSW Government digital transformation agenda which is seeking to harness available technology to modernise the planning system; and

- a wide range of methods have been utilised to engage with the community, including digital webinars, posting of hard copies upon request, social media and a 30 minute informational video.

### Heritage Conservation

Community submissions were received which requested:

- the removal of various site-specific heritage items as the items no longer retain heritage significance;
- amendments to the heritage inventory sheets based on accuracy disputes about buildings and their settings; and
- amendments to the description of heritage item names to include the setting of the item such as gardens, fences and landscaping.

### *Panel's Response*

In response, the Panel considers:

- that the proposed retention of heritage items is informed by a recently completed Hurstville Heritage Review;
- the heritage inventory sheets have been updated to include a statement of significance that justifies the retention of existing heritage items;
- any requests to change the inventory sheet will be reviewed and assessed by Council; and
- the Heritage Review has identified several item descriptions to be amended to reflect the significance of their built form and setting. The Standard Instrument requires a brief description of those things that are part of the heritage significance of the item.

### *Department's Assessment*

The Department considers the Panel's response to be adequate, noting:

- the proposed schedule involves consolidating the heritage schedules of the Legacy LEPs;
- several amendments are included in the planning proposal based on the Hurstville Heritage Review. These amendments include the modification of the description of heritage items in the former Hurstville LEP 2012 area and the removal of four items; and
- that further amendments to appropriately identify items of heritage significance can be considered by Council as part of the plan making process.

### Requests for amendments to floor space ratio provisions for dwelling houses

Community submissions were received which raised concerns that the proposed amendments will reduce the maximum permissible floor space available for dwelling houses. These submissions requested that existing FSR provisions should be retained to prevent reduced development potential.

#### *Panel's Response:*

In response, the Panel noted that the planning proposal is not proposing to reduce existing FSR provisions as this would be at odds with the overarching harmonisation principles.

#### *Department's Assessment:*

The Department considers the Panel's response adequate.

### Requests amendments to the minimum lot size for dual occupancies

Community submissions were received which raised concerns that either:

- the minimum lot size for dual occupancy development should be decreased to improve development potential; or
- that the dual occupancy should be retained to prevent increased housing densities.

#### *Panel's Response*

In response, the Panel stated that the planning proposal is not amending the existing minimum lot sizes for dual occupancies as this would be at odds with the overarching harmonisation principles.

#### *Department's Assessment*

The Department considers the Panel's response adequate.

### Objections to the proposed Residential Zones Hierarchy rezonings

The LHS includes a recommendation to establish a hierarchy of residential zones. This residential zone hierarchy seeks to restrict low, medium and high density development to their respective zones. This hierarchy is intended to align development typologies with the proposed objectives of the residential zones in the Georges River LEP 2021. The proposed hierarchy is as follows:

- R2: Dwelling houses and dual occupancies;
- R3: Attached dwellings and multi dwelling housing; and
- R4: Residential flat buildings.

In order to impose the new hierarchy, the planning proposal involves rezoning all R3 zoned land in Hurstville LEP 2012 and Kogarah LEP 2012 with a height of 12m or greater to R4. The remaining land zoned R3 will remain.

Community submissions were received which raised concerns that the proposed rezonings would:

- negatively impact existing infrastructure;
- increase traffic congestion;
- impact on existing drainage systems; and
- be inappropriate due to the extent of open space to support the potential increased population.

Community submissions were also concerned about the potential for more residential apartment development because of the rezoning of some areas to R4.

### *Panel's Response*

In response, the Panel noted:

- that residential flat buildings are high density residential development and should be represented by a R4, with the R3 zoning predominantly used for villa and townhouse developments;
- there are no increases proposed for FSR or building height provisions; and
- these amendments are consistent with Action 47 of the LSPS.

### *Department's Assessment*

The Department considers the Panel's response adequate, noting the proposed residential zones hierarchy:

- simplifies the objectives and function of each residential zone for the community by restricting medium density housing to the medium density residential zone, and residential flat buildings to the high density residential zone; and
- will ensure that permitted residential typologies reflect the objectives of the R3 zone, which emphasise landscaped settings, local character and residential amenity, and the objectives of the R4 zone, which emphasise neighbourhood vibrancy, maximising public transport patronage and promoting active transport.

### Objections to the proposed HIA rezonings

Community submissions were received which raised concerns that rezoning the HIAs would:

- exacerbate existing traffic congestion and on street parking issues;
- result in overdevelopment and adversely impact existing amenity;
- lead to increased pressure from developers approaching landowners to buy their properties;
- result in sufficient development up take given the historic development trend for dual occupancy and multi-dwelling housing in the HIAs;
- place pressure on existing infrastructure, such as stormwater, open space and schools; and
- have detrimental impacts on the significance of heritage items.

### *Panel's Response*

In response, the Panel considers that the proposed rezonings:

- are each supported by traffic impact assessments, which include recommendations to reduce traffic impacts. Council intends that these will be investigated for inclusion within the Development Contributions Plan;
- support additional medium density housing opportunities; and
- have satisfactory heritage impacts, noting the nearest heritage item near a HIA is the Former South Hurstville Methodist Church.

The Panel also notes that:

- subsequent development of the HIAs will be subject to the development application process which can further mitigate environmental impacts; and
- Riverwood is a Planned Precinct identified by the NSW Government. Any changes to zoning in the Riverwood area would be investigated as an outcome of the Riverwood Precinct Investigation Area project in collaboration with the Department, City of Canterbury Bankstown Council and other State Government Agencies.

### Department's Assessment

The Department considers the Panel's response adequate, noting:

- the planning proposal was updated in response to the Gateway determination to include the Housing Investigation Areas Paper, which provides:
  - a satisfactory assessment of the HIAs against the District Plan, the LSPS and relevant SEPPs and Section 9.1 Ministerial Directions;
  - analysis of the development standards demonstrates they can appropriately facilitate the desired future outcomes for the HIAs. This includes built form outcomes which will not result in adverse amenity impacts, such as overshadowing or overdevelopment of the land. This can be further resolved through the development application process; and
  - the supporting traffic analysis considers the increased density in the HIAs can be accommodated on the local road network.
- the HIAs seek to respond to a shortfall of dwelling capacity as identified in Council's LHS. The LHS has now been endorsed by the Department in consultation with relevant government agencies and the community; and
- TfNSW have not raised any objection to the proposed HIA rezonings as part of the consultation process for the draft George River LEP 2021 (see **Section 3.2 – Advice from agencies** of this report).

### Objections to proposed changes in the IN2 Light Industrial zone

Community submissions were received which objected to an increase in height for industrial areas in the LGA. Particular concern was raised about the Halstead St, South Hurstville industrial area.

The submissions considered that these amendments would increase the density of industrial development, causing negative impacts to the surrounding residential areas through increased:

- noise generation;
- vehicular movements and traffic; and
- safety issues from heavy vehicle movements.

Submissions requested that creative industries be considered in the IN2 Light Industrial as they would have a lesser impact on surrounding residential areas than most light industrial uses.

Submissions also raised concerns that the proposed Clause 6.17 Creative Industries in Zone IN2 conflicts with the Georges River Industrial Lands Review 2018 (the Industrial Lands Review).

### *Panel's Response:*

In response to these concerns, the Panel considered that the increased building height:

- enables the applicable FSR to be achieved within the IN2 zone;
- improves the viability of development within the IN2 zone, which will reduce the pressure for residential rezoning which is often sought to the detriment of the LGA's employment lands;
- promotes increased industrial floor space to assist with the general undersupply within the South District and encourage more investment within the LGA; and
- any potential impacts on surrounding areas can be addressed as part of any development application.

The Panel noted that creative industries:

- will be encouraged in the draft Georges River LEP 2021 through proposed Clause 6.17 - Creative Industries in Zone IN2. This clause seeks to encourage a diverse range of industries

(including creative and innovative industries) that do not compete with commercial centres and do not compromise industrial and urban services within the IN2 zone.

This clause will apply to two industrial areas, Penshurst Lane, Penshurst and Halstead Street, South Hurstville;

- are identified as being suitable for Penshurst Lane, Penshurst and Halstead Street, South Hurstville Industrial Precincts in the Industrial Lands Review, because:
  - the two identified precincts are compromised by their location in terms of attracting industrial uses and investment;
  - the types of industrial activities that can be located in these precincts are constrained due to the amenity impacts of traditional industrial land uses on the surrounding low density residential land; and
  - the precincts are unlikely to redevelop for more intensive industrial uses.

#### *Department's Assessment:*

The Department considers the Panel's response to be adequate, noting:

- the Industrial Lands Review considers the proposed building heights and FSRs safeguard industrial and urban services land from competing pressures, including residential development;
- any additional impacts caused by potential increased development densities are capable of being addressed as part of the development application process; and
- that the Penshurst Lane, Penshurst and Halstead Street, South Hurstville Industrial Precincts are unlikely to redevelop for more intensive industrial uses due to several constraints, including proximity to residential areas. As such, introducing allowing additional 'creative uses':
  - encourages adaptable use of existing industrial building stock by providing for additional uses;
  - helps deliver socially connected communities through the provision of new places where local people can meet and recreate; and
  - supports the development of the night time economy in the Georges River LGA.

#### Objections to permitting entertainment facilities in certain zones

Community submissions were received which raised concerns with permitting entertainment facilities, such as bars and functions centres in certain zones. The zonings where concerns were raised included the R4 and B6 zones. The reasons for the concerns raised included:

- the addition of restaurants, cafes and bars as permitted uses within the R4 zone, would:
  - increase anti-social behaviour;
  - impact the existing amenity in quiet residential areas; and
  - not provide additional services, as the suburbs of Georges River are already well provided for by these uses.
- objects to the addition of function centres and small bars to the B6 zoning as this will increase anti-social behaviour in areas that are within proximity of quiet residential areas.

#### *Panel's Response*

In response to these concerns, the Panel considered that restaurants, cafes and small bars in the business zones and R4 residential zone:

- facilitate the creation of active places in areas with high residential density to improve liveability and promote social interactions;
- are in accessible locations, encouraging walkability and the potential to become localised destinations for shopping, dining and meeting places;
- activate commercial areas and promote social interactions; and
- can be regulated through the development application process, which can appropriately manage and mitigate likely impacts. This includes ensuring the suitability of the proposed location and scale of the development. If the development is considered appropriate, conditions of consent can be imposed to further address impacts, such as hours of operation.

### *Department's Assessment*

The Department considers the Panel's response adequate, noting that amenity impacts such as noise and traffic will have to be addressed as part of the development application process.

### Objections to permitting entertainment facilities at Netstrata Jubilee Stadium Precinct

Community submissions were received which raised concerns with permitting entertainment facilities to the RE1 Zone at Jubilee Oval, because:

- there is insufficient justification supporting the need for this additional permitted use;
- an entertainment facility will increase the burden on traffic congestion and parking and impact the amenity of the surrounding residents;
- Kogarah Park is overburdened with constraints and is at capacity with uses on site;
- an entertainment facility will increase the burden on traffic congestion and parking, endangering school students at Carlton South Public School;
- the need for the entertainment facility is negated by the proximity of the site to St George Leagues Club; and
- there are more appropriate alternatives located within the City Centre.

### *Panel's Response*

In response, the Panel noted that:

- the LSPS identifies the site as holding potential to be a regionally significant sporting and entertainment hub. Entertainment facilities as an additional permitted use on the site is a means to achieve this potential; and
- despite being permitted, this use would still require development application(s) to be assessed before any construction could occur.

### *Department's Assessment*

The Department considers the Panel's response adequate, noting that amenity impacts such as noise and traffic will be addressed as part of the development application process.

### Objection to the proposed rezoning of hospitals to an infrastructure zone

Following the Panel's finalisation request, a submission was received from Hurstville Private Hospital objecting to the proposed rezoning of 4 Pearl Street (Lot B, DP 372968) and 6A Millet Street, Hurstville (Lot 4, DP 16273) to a SP2 Infrastructure zoning. The submission requests a R2 zone be retained on these two lots because there are no current plans for hospital development on these sites.

### *Department's Assessment*

The Department notes the requested amendment made in this submission. This matter is discussed further in **Section 3.3.2 – the Department's post-exhibition amendments** of this report.

### All other issues raised in submissions

All other issues and matters raised in the community submissions are considered to have been resolved by the post-exhibition changes, adequately addressed by the Panel or are not considered to warrant further change to the plan.

## 3.2 Advice from agencies

In accordance with the Gateway determination, the Panel was required to consult with the agencies listed below:

- Transport for NSW;
- NSW Department of Education;
- Heritage NSW;
- Sydney Airport;
- Commonwealth Department of Infrastructure, Transport, Regional Development and Communications;
- NSW Land and Housing Corporation;
- NSW Rural Fire Service;
- Office of Environment, Energy and Science;
- Sydney Water Corporation;
- NSW Health;
- Environmental Protection Authority; and
- Adjoining Councils.

The Panel received submissions from all agencies, except the following:

- NSW Health;
- NSW Land and Housing Corporation;
- Sydney Water Corporation; and
- Adjoining Councils (except Sutherland Shire).

The Panel's and Department's responses to agency submissions are discussed below:

### Sydney Airport Submission:

Sydney Airport has made a submission which notes that every development will be assessed individually on its impacts to prescribed airspace and airport operations. No further comments on the draft Georges River LEP 2021 were provided.

### *Panel's Response*

In response, the Panel noted the comments and that no amendments are required.

### *Department's Assessment*

The Department notes this submission and the Panel's response.

### Commonwealth Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) Submission:

The Department notes that the DITRDC submission incorrectly references the relevant airspace and aircraft noise clauses. These have been correctly referenced below.

DITRDC has made a submission which recommends the following amendments to the draft Georges River LEP 2021:

- to meet timeframes for development applications, Council may wish to amend clause 6.8 (2) Airspace operations.

The submission notes that under Regulation 8 of the APARs, Council is required to notify Sydney Airport of relevant development applications. To reflect this 'notification' process, but to allow issuing of development approvals, note the approval is conditional on the proponent receiving the required 'controlled activity' approval from the Department. The submission gives an example of this, being:

- if a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has notified the operator of Sydney Airport;
- Clause 6.8(5) Airspace operations – amend the term 'development approvals' to 'controlled activity' approvals to align with the Commonwealth Airports Act 1996 and Airports (Protection of Airspace) Regulations 1996 (APARs).

The submission notes DITRDC's role is to provide approval for the intrusion of a 'controlled activity' into prescribed airspace; and

- Clause 6.9(3)(b) and (c) Development in areas subject to aircraft noise – suggests amending the reference to the Australian Standard to reflect the most recent version, being 'AS2021-2015'.

The submission also noted that:

- ANEF contours for the leased federal airports, including Sydney Airport, are included in an airport's Master Plan which is reviewed periodically; and
- the ANEF contours are assessed for technical accuracy and endorsed by Airservices Australia (not DITRDC).

#### *Panel's Response*

In response, the Panel has amended the draft Georges River LEP 2021 to:

- align terminology in Clause 6.8 Airspace operations with the Airports (Protection of Airspace) Regulations 1996 (APARS) by changing the term 'development approvals' to 'controlled activity approvals';
- amend Clause 6.8 to reflect the notification process required by Council for development assessments that penetrate the operations or limitations surface, recommending the following:

If a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitations or Operations Surface, the consent authority must not grant development consent unless it has notified the operator of Sydney Airport; and

- reference Australian Standard 2021 in Clause 6.9 Development in areas subject to aircraft noise.

The post-exhibition amendments made by the Panel in response to this submission are discussed in **Section 3.3.1 – the Panel's post-exhibition amendments** of this report.

#### *Department's Assessment*

The Department considers the Panel's response to be adequate, noting that several post-exhibition amendments in response to this agency submission have been made.

The Department has also made further post-exhibition amendments in response to submissions. These are discussed in **Section 3.3.2 – the Department’s post-exhibition amendments** of this report.

NSW Rural Fire Service (RFS) Submission:

RFS has made a submission which notes that the five HIAs are not mapped as bush fire prone. Therefore, NSW RFS raised no objection to the planning proposal.

*Panel’s Response:*

In response, the Panel noted the comments and that no amendment is required.

*Department’s Assessment:*

The Department notes this submission and the Panel’s response.

Heritage NSW Submission:

Heritage NSW has made a submission which considers that the planning proposal will either have a positive heritage impact or results in amendments which are administrative in nature. As such, the submission raises no objection to the planning proposal.

*Panel’s Response:*

In response, the Panel noted the comments and that no amendments are required.

*Department’s Assessment:*

The Department notes this submission and the Panel’s response.

Schools Infrastructure – NSW Department of Education (SINSW) Submission:

On 17 August 2020, following consideration of the post-exhibition report by the Panel, Schools Infrastructure at the NSW Department of Education made a submission on the draft Georges River LEP 2021.

The submission states that the overall direction and land-use controls contained in the draft Georges River LEP 2021 are generally supported, subject to considerations to ensure school infrastructure can be appropriately provided to respond to population growth.

The specific matters raised in the submission include general support for:

- the proposed permissibility of educational establishments; and
- the land owned by education providers (and operating as a school) to the ‘SP2 Educational Establishment’.

The submission considers that:

- the partial listing of schools as heritage items across the LGA should be encouraged, as often only a portion of the school contains elements of heritage significance; and
- no existing schools will be affected by the proposed 40m buffer zone applying to ‘sensitive lands’ along the Georges River front and Salt Pan Creek under the planning proposal.

*Department’s Assessment:*

The Department notes these matters and supports early engagement with SINSW to plan for future growth and the heritage listing of schools.

#### Transport for NSW (TfNSW) Submission:

TfNSW has made a submission generally supportive of the draft Georges River LEP 2021, but it does raise concerns with aspects of the planning proposal.

The Department considers the planning proposal appropriately responds to all concerns raised. The Panel's and the Department's detailed responses to the submission are found at **Appendix A** of this report.

#### Environment, Energy and Science (EES) Group Submission:

EES Group has made a submission which is generally supportive of the draft Georges River LEP 2021, but does raise several matters and recommendations to update the planning proposal.

The Department and the Panel have supported some of these suggested amendments, being:

- revising the Aims of the Plan to include 'protect and preserve waterways';
- inserting considerations in proposed Clause 6.6 - Riparian Lands and Watercourses for riparian species; communities and populations; and aboriginal cultural heritage values of waterways and riparian lands; and
- revising considerations in Clause 6.7 – Foreshore Scenic Protection Area so that applicable development:
  - 'avoids and minimises' impacts on disturbance and adverse impacts on remnant vegetation communities; and
  - provides 'enhancement' of native vegetation and habitat.

These post-exhibition changes are discussed in further detail at **Section 3.3.1 – the Panel's post-exhibition changes** of this report.

The planning proposal otherwise appropriately responds to all other concerns raised. The Panel's and the Department's detailed responses to the submission are found at **Appendix B** of this report.

#### Environmental Protection Authority (EPA) Submission:

The EPA has made a submission which is generally supportive of the draft Georges River LEP 2021, but does raise several matters and suggested amendments.

The Department and the Panel have supported some of these suggested amendments, being:

- revising the Aims of the Plan to include 'protect and preserve waterways';
- inserting an additional objective in the IN2 zone to encourage a range of uses that support repair, reuse, recycling, remanufacturing and reprocessing; and
- inserting an additional considerations for Clause 6.11 – Design Excellence, being: *'the provision of integrated waste and recycling infrastructure on site, addressing storage, safety, efficiency, accessibility to waste, reuse and recycling services, and collection without compromising the safety and amenity of the public domain'*.

These post-exhibition changes are discussed in further detail at **Section 3.3.1 – the Panel's post-exhibition changes** of this report.

The Department considers the planning proposal otherwise appropriately responds to all other concerns raised. The Panel's and the Department's detailed responses to the submission are found at **Appendix C** of this report.

### Sutherland Shire Council Submission:

Sutherland Shire Council has made a submission which is generally supportive of the draft Georges River LEP 2021.

The submission raises the importance of cross Council collaboration to ensure they can tackle issues such as the limited capacity of transport infrastructure to accommodate significant future population growth. The Council noted that the proposed additional 12,000 dwellings by 2036 in the Southern District will result in cumulative impacts on the existing road and rail.

Sutherland Shire Council supported the amendments to the below LEP clauses for their ability to encourage better outcomes for the foreshore area:

- Clause 6.2 - Earthworks
- Clause 6.3 - Flood Planning
- Clause 6.4 - Stormwater Management
- Clause 6.5 - Foreshore Area and Coastal Hazard and Risks
- Clause 6.6 - Riparian land and watercourse
- Clause 6.7 - Foreshore scenic protection area

### *Panel's Response*

In response, the Panel noted the support from Sutherland Shire Council and indicated their willingness, on behalf of Georges River Council, to collaborate with Sutherland to plan for the provision of additional infrastructure to support future growth.

### *Department's Assessment*

The Department notes this submission, the Panel's response and encourages collaboration between adjoining Councils.

## 3.3 Post-exhibition changes

### 3.3.1 the Panel's post-exhibition amendments

At the Panel Meeting on 25 & 26 June 2020, the Panel resolved to proceed with the planning proposal with several post-exhibition changes. These are detailed below:

#### Proposed Aims of the Plan

##### *Panel Amendment*

In response to a submission from EES Group, the Panel has made an amendment to proposed Clause 1.2 - Aims of the Plan to include '*protection and maintenance*' of waterways.

##### *Department's Assessment*

The Department considers this post-exhibition amendment by the Panel to be justified and not requiring re-exhibition, because:

- it responds to an agency submission; and
- is in keeping with the intent of the exhibited planning proposal.

### Objectives of the R2 and R3 zones

#### *Panel Amendment*

In response to submissions received, the Panel has separated ‘a *landscape setting*’ from ‘*urban design and built form*’ as objectives for the R2 and R3 zones. This is to emphasise the importance of housing situated in a landscaped setting as a desirable characteristic through a standalone zone objective.

#### *Department’s Assessment*

The Department considers these post-exhibition amendments by the Panel to be justified and not requiring re-exhibition, because:

- it responds to community submissions; and
- is in keeping with the intent of the exhibited planning proposal.

### Objectives of the IN2 Light Industrial zone

#### *Panel Amendment*

In response to a submission from the EPA, the Panel have inserted an additional zone objective to encourage a range of uses that support the repair, reuse, recycling, remanufacturing and reprocessing of waste.

#### *Department’s Assessment*

The Department considers this post-exhibition amendment by the Panel to be justified and not requiring re-exhibition, because:

- it responds directly to an agency submission; and
- is in keeping with the intent of the exhibited planning proposal.

### Proposed Acquisitions for Public Open Space at 11-21 Monaro Avenue, Kingsgrove

#### *Panel Amendment*

In response to submissions received, the Panel resolved to remove the proposed acquisitions of 11-21 Monaro Avenue, Kingsgrove for public open space.

Despite this amendment, the Panel acknowledged the shortage of open space in this part of the LGA. In response, the Panel encouraged Council to continue investigating all opportunities for the delivery of additional public open space as part of future amendments to the draft Georges River LEP 2021.

#### *Department’s Assessment*

The Department considers this post-exhibition amendment by the Panel to be justified and not requiring re-exhibition, because it responds to community submissions.

The Department encourages Council to explore further opportunities for delivering public open space in consultation with the community to ensure that Council’s public open space needs are satisfied.

### Riparian lands and waterways clause

#### *Panel Amendment*

In response to a submission from EES Group, the Panel has made the following post-exhibition amendments to this clause:

- substitute all references to ‘*watercourses*’ to ‘*waterways*’ to capture other waterbodies such as creeks and wetlands;
- amend objective (1(c)) to better capture aquatic and riparian ecosystems; and
- inserted additional consideration of local native riparian vegetation and aboriginal cultural heritage values of waterways through:
  - insertion of new clause objective; and
  - amendment to a heads of consideration

#### *Department’s Assessment*

The Department considers these post-exhibition amendments by the Panel to be justified and not requiring re-exhibition, because:

- they respond directly to an agency submission; and
- are in keeping with the intent of the exhibited planning proposal, being to protect and maintain waterbodies and riparian areas, including their associated cultural and ecological values.

#### Foreshore Scenic Protection Area clause

##### *Panel Amendment*

In response to submissions received from the community, the Panel have made the following post-exhibition amendments to this clause:

- inserted the words ‘*avoids and minimises*’ (subclause 3(b)) disturbances on flora and fauna and inserts the words ‘*enhancement*’ (subclause 3(c)) of native vegetation and habitat;
- retained of the existing FSPA as identified by the Hurstville LEP 2012 Foreshore Scenic Protection Area map; and
- confirmed the addition of the proposed FSPA exhibited by the planning proposal map entitled ‘*Foreshore Scenic Protection Area Map*’ and shown in pink shading as exhibited.

#### *Department’s Assessment*

The Department considers these post-exhibition amendments by the Panel to be justified and not requiring re-exhibition, because they:

- respond to community submissions;
- responds to EES Group’s submission; and
- seeks to maintain the existing controls and application of the FSPA under the *Hurstville LEP 2012*, subject to further analysis by Council.

The Department notes the recommendations of the Panel concerning further analysis required to support any future amendment of the FSPA. The Department encourages Council to undertake this work in consultation with the community.

### Airspace operations clause

#### *Panel Amendments*

In response to DITRDC's submission, the Panel has made the following post-exhibition amendments:

- align terminology in the airspace operations clause with the Airports (Protection of Airspace) Regulations 1996 (APARS) by changing the term 'development approvals' to 'controlled activity approvals'; and
- amend the airspace operations clause to reflect the notification process required by Council for development assessments that penetrate the operations or limitations surface, recommending the following:

If a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitations or Operations Surface, the consent authority must not grant development consent unless it has notified the operator of Sydney Airport.

#### *Department's Assessment*

The Department notes the Panel's post-exhibition amendments in response to DITRDC's submission.

The Department has made further post-exhibition amendments to this clause. These are discussed further in **Section 3.3.2 – the Department's post-exhibition amendments** of this report.

### Development subject to aircraft noise clause

#### *Panel Amendment*

In response to DITRDC's submission, the Panel has made a post-exhibition amendment to update the clause's reference to Australian Standard 2021.

#### *Department's Assessment*

The Department considers this post-exhibition amendment by the Panel to be justified and not requiring re-exhibition, because they:

- respond directly to an agency submission; and
- are in keeping with the intent of the exhibited planning proposal.

### Design Excellence clause

#### *Panel Amendments*

In response to submissions, the Panel have made the following post-exhibition amendments:

- delete the requirement that development be reviewed by an urban designer or a registered architect appointed from an independent panel as nominated by Georges River Council.

The Panel removed this requirement as it was considered unreasonable; and

- amend the considerations for design excellence to encourage the management and minimisation of waste in response to a submission from the EPA.

#### *Department's Assessment*

The Department considers this post-exhibition amendment by the Panel to be justified and not requiring re-exhibition, because they:

- respond directly to an agency submission; and

- respond to community submissions, which raised concerns with the requirement for development to be reviewed by an urban designer or registered architect as being onerous and excessive.

The Department has also made further post-exhibition amendments to this draft clause. These are discussed further in **Section 3.3.2 – the Department’s post-exhibition amendments** of this report.

#### Landscaped areas in certain residential and environmental protection zones clause

##### *Panel Amendment*

In response to submissions received, the Panel have amended the minimum landscaped areas for dual occupancy development as follows:

- i. Outside the FSPA – from 20% to 25%; and
- ii. Inside the FSPA – from 25% to 30%.

The Panel considers these increased minimums can be achieved under existing and proposed DCP setback controls, as demonstrated in supported modelling.

##### *Department’s Comments*

The Department considers this post-exhibition amendment by the Panel to be justified and not requiring re-exhibition, because:

- they respond to submissions which raised concern about the protection of the existing tree canopy and landscaped characteristics of the LGA across the low and medium density residential zones; and
- modelling and built form testing have been conducted for the increased dual occupancy landscaped area requirements which demonstrates the increased minimum areas can be achieved with existing DCP controls and the applicable FSR.

The Department has made further post-exhibition amendments to this proposed clause. These are discussed further in **Section 3.3.2 – the Department’s post-exhibition amendments** of this report.

#### Addition of the tree protection and landscaping in zones R2 and R3 clause

##### *Panel Amendments*

In response to submissions received from the community, the Panel resolved to introduce this clause as a post-exhibition amendment.

The introduction of this clause is to ensure any development undertaken on land in the R2 and R3 zones not only maintains, but enhances the landscape character and tree canopy of the LGA. The application of this clause will be supported by Council’s Tree Management Policy which was adopted in April 2019. This Policy seeks to achieve the minimum 40% urban tree canopy cover by 2038 as specified in the Greater Sydney Region Plan.

##### *Department’s Assessment*

The Department notes this post-exhibition amendment by the Panel and has made post-exhibition amendments to this proposed clause. These are discussed further in **Section 3.3.2 – the Department’s post-exhibition amendments** of this report.

### Amendments to proposed Item 11 of Schedule 1 Additional Permitted Uses – Use of certain land for a places of public worship

#### *Panel amendments*

In response to submissions, the Panel has included the following sites within Item 11:

- 1142 Forest Road, Lugarno, being Lot 9, DP 13472 (Lugarno Anglican Church);
- 3A Old Forest Road, Lugarno, being Lot 18, DP 13473 (Lugarno Anglican Church);
- 3A Old Forest Road, Lugarno, being Lot 19, DP 13473 (Lugarno Anglican Church); and
- 20 River Road, Oatley, being Lot 2, Section 5, DP 2297 (Oatley Gospel Chapel).

In response to submissions, the Panel has removed the following site within proposed Item 11 and rezoned the site to SP2 Educational Establishment and Place of Public Worship:

- 19 Warrawee Place, Beverly Hills, being Lots 42, 43 and 44, DP 13496.

#### *Department's Assessment*

The Department considers these post-exhibition amendments by Council to be justified and not requiring re-exhibition, because:

- the inclusion of places of public worship in found R2 zoned areas as part of Schedule 1 will ensure the ongoing upkeep and development of churches is appropriately facilitated;
- this proposal encourages the establishment of new places of public worship in areas capable of supporting this land use to avoid unsatisfactory amenity impacts. These impacts include noise, traffic, car parking, bulk and scale;
- it aligns with the intent of the planning proposal; and
- it is in response to community submissions.

### Insertion of Item 13 into Schedule 1 Additional Permitted Uses – Use of certain land for office premises

#### *Panel amendments*

In response to Gateway condition (q), the Panel has inserted this Item 13 into Schedule 1. The Gateway supported the retention and intent of the proposed *Creative industries in Zone IN2 clause* on the specific sites but prohibited office premises in the IN2 zone.

These specific sites are at Penshurst Land, Penshurst and Halstead Street, South Hurstville. These are known as the Penshurst Land and Halstead Street Industrial Precincts

#### *Department Assessment*

The Department considers this post-exhibition amendment by the Panel to be justified and not requiring re-exhibition, because the amendment aligns with the intent of the planning proposal, including the Gateway determination.

The Department has made post-exhibition amendments to this proposed additional permitted use, which are discussed in **Section 3.3.2 – the Department's post-exhibition amendments** of this report.

### Resolution of Mapping Errors

#### *Panel Amendments*

In response to submissions and administrative review by Council officers, the Panel resolved to make minor mapping amendments. These amendments either:

- resolve administrative mapping errors inconsistent with the intent of the planning proposal; or
- update mapping in response to post-exhibition amendments.

#### *Department's Assessment*

The Department considers these mapping amendments by the Panel to be justified and not requiring re-exhibition, because they:

- resolve administrative mapping errors;
- respond to community and agency submissions; and
- respond to post-exhibition changes.

### 3.3.2 the Department's post-exhibition amendments

Following the receipt of the revised planning proposal from the Panel, the Department has made further amendments to the planning proposal. These changes are as follows:

#### Repealing of planning instruments applying to the land clause

The Department has identified a minor error in the draft instrument concerning the repeal of *Hurstville LEP 1994*. It is intended that this instrument still apply to two deferred sites, being:

- the Hurstville Westfield deferred site; and
- the Hurstville Civic Centre deferred site.

It was initially intended that all deferred sites in the LGA be translated into the draft Georges River LEP 2021. However, the Gateway determination considered it appropriate that separate planning proposals be pursued for these sites. This was due to the complexity of the issues identified with these two sites and lack of justification in the planning proposal supporting the proposed zonings and development standards.

This post-exhibition amendment is justified and does not require re-exhibition, because it addresses the errors identified the exhibited planning proposal documentation.

#### Suspension of covenants, agreements and instruments clause

The intent of the planning proposal is to harmonise the Legacy LEPs, which includes carrying over existing model provisions which suspend any covenant, agreement or similar instruments.

Section 3.16 of the Act provides environmental planning instruments (EPIs), such as a LEP, with the power to suspend 'regulatory instruments' insofar as they would prevent development from being carried out in accordance with a development consent granted under the Act.

Section 3.16(1) of the Act defines 'regulatory instruments' as any Act (other than the *Environmental Planning and Assessment Act 1979*), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument.

This power has existed in the Act since 1979 (formerly section 28).

The inclusion of model clause 1.9A into the Georges River LEP 2021 carries over existing clauses from the Hurstville LEP 2012 and Kogarah LEP 2012. This clause seeks to:

- prevent any covenant, agreement or similar instruments otherwise prohibiting or restricting permitted development;
- allow development to be carried out that is consistent with local, regional and state plans and policies; and

- apply consistently with Georges River's existing Hurstville LEP 2012 and Kogarah LEP 2012 suspension provisions.

Proposed clause 1.9A will apply to all land in the Georges River LGA, except for deferred land outlined in red on the Georges River LEP 2021 Land Application Map.

This post-exhibition amendment is justified and does not requiring re-exhibition, because it is in keeping with the intent of the planning proposal, being to harmonise the Legacy LEPs.

Proposed rezoning of 4 Pearl Street (Lot B, DP 372968) and 6A Millet Street, Hurstville (Lot 4, DP 16273) to an Infrastructure zoning

Following submission of the planning proposal for finalisation, the Department received a submission from Hurstville Private Hospital requesting a R2 zone be retained on 4 Pearl Street and 6A Millet Street, Hurstville.

The submission notes that though the planning proposal seeks to zone hospital owned land to SP2-Infrastructure to protect this infrastructure, there is no planned hospital use for these two lots.

It appropriate to retain a R2 zone for these two lots, because:

- no hospital use is proposed on these two lots;
- 4 Pearl Street is isolated from the hospital; and
- the proposed R2 zone permits '*health services facility*' which includes health uses such as a hospital and medical centres.

These post-exhibition amendments are justified and do not require re-exhibition, because they respond to a submission and retain the existing provisions of the Hurstville LEP 2012.

Non-residential floor space ratios clause

The Department has made minor amendments to:

- include Amendment No.16 to the Hurstville LEP 2012; and
- the definitions of 'non-residential floor space' and 'relevant purpose'. These amendments:
  - ensure consistent referencing of Standard Instrument land use terms; and
  - resolve minor reference and drafting errors.

These post-exhibition amendments are justified and do not requiring re-exhibition, because:

- they are in keeping with the intent of the exhibited planning proposal; and
- include a recent update to the Hurstville LEP 2012.

New Flood Planning and Special Flood Considerations Clauses - Amendments to the NSW Flood Prone Land Package

From 30 April to 25 June 2020, the Department publicly exhibited a series of proposed amendments to the '*NSW Flood Prone Land Package*', which will provide the policy framework for considering flooding in land use planning. The amendments of relevance to this planning proposal are:

- revised LEP flood clauses, being:
  - a new mandatory flood planning clause in the Standard Instrument to replace existing flood planning clauses, which will include revised guidance to nominate the flood planning level in the DCP; and

- a new optional provision for special flood consideration for sensitive land uses, which is in keeping with Council's exhibited flood risk management clause.

It is intended that these amendments replace existing flood planning and special flood planning consideration clauses.

- revisions to Section 9.1 Direction 4.3 – Flood Prone Land.

#### *The New Flood Planning Clauses*

In response to the finalisation of amendments to the 'NSW Flood Prone Land Package', the draft Georges River LEP 2021 has been updated to introduce a new flood planning clause 5.21 – Flood planning. 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 Georges River LEP 2021; and
- respond to the NSW Government's 'Amendments to the NSW Flood Prone Land Package' which have been publicly exhibited and finalised by the Minister.

#### *Revised Section 9.1 Ministerial Direction 4.3 – Flood Prone Land*

A revision to Ministerial Direction 4.3 has been introduced that removes the current clauses restricting the ability of councils to apply flood related development controls above the 1% AEP. This gives councils greater flexibility and recognises the potential consequences of significant flood events.

The planning proposals consistency with Ministerial Direction 4.3 – Flood Prone Land was unresolved at Gateway. The proposals consistency with the revised direction is discussed in **Section 4.1 - Department's Assessment** of this report.

#### Stormwater management clause

Minor amendments have been made to the clause to ensure the intent of the exhibited clause was clearly applied to all development to in the Georges River LGA.

This clause gives effect to Council's *Stormwater Management Policy (SMP)* which includes measures to reduce stormwater impacts on both Council stormwater infrastructure and adjoining properties.

This post-exhibition amendment is justified and does not require re-exhibition, because it is in keeping with the intent of the exhibited planning proposal.

#### Foreshore Scenic Protection Area clause

The Department has removed a proposed consideration concerning desired future character. In the legal drafting process it was considered that this should be removed as the 'desired future character' was an ambiguous term providing no certainty and therefore is not able to be used to assess development applications.

The Department exhibited an Explanation of Intended Effect (EIE) for local character from November 2020 to January 2021 which proposed an LEP model clause referring to Local Character Areas Statement.

Submissions from the exhibition revealed mixed feedback on the local character clause, and a decision on the EIE has not been made. Currently there is no Department-endorsed statutory pathway to include local character in LEPs. As such, this element is not supported at this time.

However references to, and mapping of, local character areas may be included in Council's DCP. Despite removal of this single consideration, the clause retains the intent of the exhibited proposal and adequately addresses submissions received regarding the FSPA. The wording of the clause also retains the considerations in the Hurstville LEP 2012.

#### Airspace Operations clause

In response to DITRDC's submission, the Panel has made several post-exhibition amendments to this clause as discussed in **Section 3.3.1 – the Panel's post-exhibition amendments** of this report.

In response to DITRDC's submission, the references to the development application process have been removed, because the conditioning of a development consent on this matter can be adequately addressed through the development application process. This can include consultation with the relevant authorities.

However, the suggested amendments to reference the *Airports Act 1996* have been retained. This will ensure all relevant airspace protection surfaces are captured for consideration as sort by the DITRDC's submission. This approach is also consistent with other LEPs affected by aerospace operations, such as the Bayside LEP 2021.

This amendment is justified and does not require re-exhibition, because it:

- is in keeping with the intent of the exhibited planning proposal; and
- respond to an agency submission.

#### Design Excellence clause

The following amendments to the proposed design excellence clause have been made:

- to the clause which identifies what development design excellence is applied:
  - to capture the equivalent building height<sup>2</sup> of 3 building storeys has been inserted, being 12m. This provides consistency with the building height clauses in Part 4 of the draft Georges River LEP 2021; and
  - to ensure consistency with the exhibited plain English explanation, the clause has been revised to clarify that *new development in the high density residential zones* where it meets the building height requirements (3 storeys or 12m) needs to satisfy design excellence requirements. This was not accurately reflected in the exhibited draft clause which sort to apply design excellence to *residential accommodation* where it met the specified building height requirements (3 storeys or 12m); and
- delete the proposed clause which requires design excellence be applied to development where there is a 10% variation to a development standard.

---

<sup>2</sup> **building height** (or **height of building**) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

This is not supported because it is:

- not in keeping with the exhibited plain English explanation of the design excellence clause; and
- inconsistent with the mandated Standard Instrument criteria for a clause 4.6 variation to a development standard.
- remove design excellence considerations around water sensitive urban design principles, special character areas and heritage considerations.

These requirements are overly prescriptive for an LEP provision, inconsistent with Standard Instrument definitions and repeat considerations in other parts of the draft Georges River LEP 2021.

Council are encouraged to further consider these matters for inclusion as part of its DCP.

These amendments are justified and do require re-exhibition because they:

- are in keeping with the intent of the exhibited planning proposal; and
- respond to policy and drafting requirements.

#### Environmental sustainability in certain business, industrial and residential zones clause

The requirement for a development application's compliance with the clause's considerations to be verified against a statement of verification prepared by an Australian Building Sustainability Association accredited assessor has been removed.

This requirement for a statement of verification is inconsistent with clause 50 and Part 1 of Schedule 1 in the *Environmental Planning & Assessment Regulations 2000* (the regulations).

This post-exhibition amendment is justified and does not requiring re-exhibition, because it responds to statutory requirements under the Act.

#### Landscaped areas in certain residential and environmental protection zones clause

The following amendments to the proposed landscaping and environmental protection clause have been made:

- clearly specify that the minimum landscaped areas be calculated from the 'total' site area. This will ensure:
  - adequate landscaping is provided through calculation of the applicable minimum based on the total site area of the development; and
  - a consistent calculation methodology with the maximum built form footprint as controlled through the applicable FSR.
- removal of the proposed landscaped area definition noting that this is already defined in the Standard Instrument dictionary; and
- consolidation of this clause with proposed tree protection and landscaping in zones R2 and R3 clause. The introduction of the new tree protection clause was a post-exhibition amendment by the Panel in response to submissions received.

It is considered unnecessary to draft two separate clauses which both seek to maintain and enhance landscaped character and contribute to the tree canopy. Though the intent of the clause to protect trees and landscaping is supported, the following concerns exist with the clause as proposed by the Panel, being:

- it includes provisions which are beyond the detail for which an EPI is to prescribe;

- conservation measures are secured through the Biodiversity Offsets Scheme under the *Biodiversity Conservation Act 2016*;
- contribution for tree planting is not appropriate to include in a LEP because it is beyond the scope of the Act; and
- to require an assessment into the current health and condition of trees before any development can be permitted on the land is not appropriate to include in a LEP because it is beyond the scope of the Act.

In consultation with Council and noting the community submissions, the key matters for consideration of the tree protection and landscaping clause have been narrowed, to include:

- how the development integrates with the existing vegetation to protect existing trees and natural landscape features;
- the health, significance and status of the trees existing on the development site and adjacent sites;
- the vegetation to be incorporated into the development; and
- any construction methodologies required to ensure the trees required to be retained are protected during and post construction.

The detailed requirements proposed by the Panel can be considered for inclusion in the DCP or other appropriate plans.

The application of the key matters for consideration proposed under the tree protection and landscaping clause will now also apply to the R4 and E2 zones. This is considered appropriate because it:

- responds to submissions;
- is in keeping with the intent of exhibited Clause 6.13; and
- is in keeping with the intent of the planning proposal to achieve 40% tree canopy cover by 2038.

These post-exhibition amendments are justified and do not require re-exhibition, because they:

- respond to submissions;
- address statutory requirements under the Act; and
- are in keeping with the intent of the exhibited planning proposal.

#### Development for the purposes of dual key dwellings in zones R2 and R3 clause

The intent of the clause is to provide for a development of an internal secondary dwelling up to a maximum of 75sqm when wholly contained within the principal dwelling. This is known within the planning proposal as a '*dual key dwelling*'.

The term '*dual key dwelling*' is not a recognised under the Standard Instrument.. Subsequently, noting the clauses intent, the appropriate Standard Instrument land use term is '*secondary dwelling*<sup>3</sup>'.

---

<sup>3</sup> ***secondary dwelling*** means a self-contained dwelling that—

During detailed drafting, the interaction of this proposed provision with clause 23(2)(h)<sup>4</sup> of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (the Affordable Housing SEPP) has been further considered. This has raised concerns that this amended clause would:

- allow for secondary dwellings to achieve a GFA of 75sqm as complying development; but
- the increased floor area would be permitted under complying development without being wholly contained within the building of an existing principal dwelling.

To make this clause in accordance with the Standard Instrument would be inconsistent with the intent of the exhibited planning proposal. As such, the clause has been removed from the draft Georges River LEP 2021.

Despite deletion of this clause, the Department encourages Council to continue exploring opportunities to provide for housing supply and diversity.

It is also noted that Council has not objected to the deletion of this clause.

#### Development in certain business zones clause

Minor amendments to this proposed clause have been made to clarify that:

- ‘*essential services*’ are building utilities, including electrical substations, air condition and/or fire hydrants; and
- ‘*non-residential uses*’ are any uses other than ‘*residential accommodation*’ and ‘*tourist and visitor accommodation*’.

It is not considered necessary to re-exhibit the amendments as they respond to suggested legal drafting and are in keeping with the intent of the exhibited planning proposal.

#### Creative industries in Zone IN2 clause

This clause has been included into the draft Georges River LEP 2021 in response to the Gateway determination, which:

- required office premises be ‘prohibited’ in the proposed IN2 zone; but
- supported the intent and application of ‘creative industries’ in the Penshurst Land and Halstead Street industrial precincts.

The intent of the clause is to permit a broader range of creative industrial uses in the Penshurst Land and Halstead Street Industrial Precincts. Council’s Industrial Land Review identified that these areas are compromised by their location, limiting their suitability for most industrial uses. This includes constraints attributable to nearby low density residential development.

However, these two precincts were identified as being suitable for ‘creative industries’ which include uses such as media, advertising, fine arts and craft, design, film and television, music, publishing, performing arts, cultural heritage institutions or other related purposes.

- 
- (a) is established in conjunction with another dwelling (the ***principal dwelling***), and
  - (b) is on the same lot of land as the principal dwelling, and
  - (c) is located within, or is attached to, or is separate from, the principal dwelling.

<sup>4</sup> ‘Clause 23 (2)(h) - will not result in the floor area of the secondary dwelling being more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, being more than that greater floor area.’

However, 'creative industries' are not a defined use in the Standard Instrument. Therefore, linking 'creative industries' with an existing land use term is necessary. In this instance, 'office premises' is the appropriate term with which to link 'creative industries', which is a similar approach taken in other LEPs. As such, 'office premises' have been supported as an additional permitted use in the Penshurst Land and Halstead Street industrial precincts, subject to their use for 'creative industries'.

This post-exhibition amendment is justified and does not requiring re-exhibition, because it is a drafting amendment in keeping with the intent of the exhibited planning proposal.

#### Addition of the tree protection and landscaping in zones R2 and R3 clause

As discussed earlier in this section of the report, this clause has been consolidated with the landscaped areas in certain residential and environmental protection zones clause.

It is not considered necessary to re-exhibit the amendments as it is in keeping with the intent of the exhibited planning proposal, responds to submissions and legal drafting.

#### Further amendments to the instrument

Any further amendments to the instrument have been undertaken as part of the drafting process by Parliamentary Counsel. These are minor and do not affect the intent of the exhibited planning proposal.

#### Further mapping amendments

The finalisation of the draft Georges River LEP 2021 has required minor mapping amendments to the planning proposal submitted by Council for finalisation, because:

- stylist changes were required to align with the [Standard Technical Requirements for Spatial Datasets and Maps](#);
- ensure the mapping accurately reflects the intent of the exhibited planning proposal; and
- updates to account for recently notified planning proposals need to be made.

### 3.3.3 Justification for post-exhibition changes

These post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes:

- are a reasonable response to comments provided by agencies and community submissions;
- ensure that relevant matters are further addressed at the development stage; and
- do not alter the intent of the planning proposal.

## 4 Department's Assessment

The planning proposal has been subject to detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes. This includes public consultation and engagement.

The following section reassesses the planning proposal to confirm whether it is consistent with the assessment undertaken at the Gateway determination stage (**Table 5**).

Where the planning proposal is inconsistent with this assessment, requires further analysis, requires reconsideration of any unresolved matters or assessment following updates to the strategic planning framework since the Gateway determination, these are addressed in Section 4.1.

**Table 1 Summary of strategic assessment**

|                                               | Consistent with Gateway determination report Assessment |                                                              |
|-----------------------------------------------|---------------------------------------------------------|--------------------------------------------------------------|
| Regional Plan                                 | <input checked="" type="checkbox"/> Yes                 | <input type="checkbox"/> No, refer to section 4.1            |
| District Plan                                 | <input checked="" type="checkbox"/> Yes                 | <input type="checkbox"/> No, refer to section 4.1            |
| Local Strategic Planning Statement            | <input checked="" type="checkbox"/> Yes                 | <input type="checkbox"/> No, refer to section 4.1            |
| Local Planning Panel (LPP) recommendation     | <input checked="" type="checkbox"/> Yes                 | <input type="checkbox"/> No, refer to section 4.1            |
| Section 9.1 Ministerial Directions            | <input type="checkbox"/> Yes                            | <input checked="" type="checkbox"/> No, refer to section 4.1 |
| State Environmental Planning Policies (SEPPs) | <input type="checkbox"/> Yes                            | <input checked="" type="checkbox"/> No, refer to section 4.1 |

**Table 2 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 4.1 |
| Environment impacts         | <input checked="" type="checkbox"/> Yes                 | <input type="checkbox"/> No, refer to section 4.1 |
| Infrastructure              | <input checked="" type="checkbox"/> Yes                 | <input type="checkbox"/> No, refer to section 4.1 |

## 4.1 Detailed Assessment

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

### **Georges River Local Strategic Planning Statement**

The planning proposal is consistent with the LSPS which establishes the 20-year vision for land use in the LGA, the special character and values that are to be preserved, and how change will be managed in the future. The LSPS was publicly exhibited between 26 June 2019 and 7 August 2019. The LSPS was endorsed and made on 11 March 2020. As noted in **Section 1.1 - Overview** of this report, the LSPS describes an anticipated staged approach to implement its vision.

The planning proposal is considered consistent with the LSPS, with consideration of key issues below:

- the proposed minimum non-residential FSR local provision and ground floor non-residential uses along street frontages local provisions align with Action A59 *'Introduce controls in to Council's LEP 2020 to ensure the provision of non-residential floor space in the LGAs commercial centres'*;
- additional land uses will be permitted in certain areas of Council's light industrial zone by virtue of the proposed Creative industries in Zone IN2 clause as per Action A60 *'Introduce a broader range of land uses into the IN2 Industrial zone in Council LEP 2020'*;
- tourist and visitor accommodation and serviced apartments will be permissible in Zone B4 to allow medi-hotel development in the Kogarah medical precinct, consistent with Action A65 *'Introduce zoning and controls in Council's LEP 2020 that enable tourist and visitor accommodation, medi-hotels and carer accommodation in and adjacent to medical precincts'*;
- adding 'entertainment facility' as an additional permitted use for Jubilee Stadium is consistent with Action 26 *'Consolidate Netstrata Jubilee Stadium as a regional sporting and entertainment hub, a premier sporting precinct with a range of recreation and entertainment options'*
- the proposed environmental sustainability local provision implements Action 91 *'Provide provisions in Council's LEP 2020 to ensure development in business, industrial and high density residential zones is consistent with principles of sustainable practice and environmentally sensitive design'*;
- the proposed expansion in area of the FSPA throughout the Kogarah LEP area implements the direction of Action A84 *'Expand the Foreshore Scenic Protection Area across the LGA through Council's LEP 2020'*;
- Council consulted with Sutherland Shire Council and Bayside Council to ensure consideration of appropriate land use controls across boundaries. This aligns with A79 *'Collaborate with neighbouring councils to ensure effective and consistent land use controls and public space amenity, infrastructure and maintenance across boundaries'*;
- the proposed Design Excellence Provisions align with A45 *'Incorporate Design Excellence provisions in Council's LEP 2020'*;
- the proposed rezonings in the Housing Investigation Areas aligns with A48 *'Facilitate a broader range of housing types across the LGA through rezoning land, including controls for medium density development in Council's LEP and DCP'*; and
- the public exhibition process and various means by which the Council communicated the changes associated with this planning proposal to the community aligns with A34 of the LSPS *'Engage the community on land use, development and infrastructure provisions and consider the feedback in decision making'*.

### **The Georges River Local Housing Strategy**

The LHS includes a vision to support the diverse housing needs of the Georges River Community in alignment with the NSW strategic planning framework. To achieve this vision, the LHS includes the following 7 objectives:

1. Accommodate additional housing growth;
2. Coordinate growth with infrastructure;
3. Provide affordable and inclusive housing;
4. Provide greater housing choice and diversity;

5. Have consistent LEP zoning and controls across the LGA;
6. Enhance and protect the local character; and
7. Facilitate good design and sustainable development practices.

The LHS identifies:

- capacity to contribute over 12,000 additional dwellings to the South District for the full 20-year period (from 2016 to 2036), including:
  - 5,532 dwellings to be delivered through major development and planning proposal opportunities (including those pre-Gateway planning proposals listed below); and
  - 6,602 dwellings from take up of existing zoning controls.
- a 6-10 year (2021-2026) housing target of 3,450 dwellings.

#### *The Department's Endorsement of the LHS*

On 23 June 2021, the Georges River LHS was endorsed by the Department, subject to conditions. The Department's endorsement of the LHS considers that:

- Council's work to facilitate housing supply in the Georges River LGA is likely to meet and well exceed the GSC's minimum 6–10 year housing target. The primary risks and dependencies to achieving a consistent housing supply pipeline in the short term (and meeting the 6 – 10-year housing target) are:
  - project completion for sites with development approval;
  - timely finalisation of the Stage 1 and Stage 2 Georges River LEP updates; and
  - timely development approval and project delivery for recently finalised Planning Proposals.
- addresses the need for housing diversity through a centres-based approach and amendments to planning controls to create opportunities for infill medium density housing development; and
- monitoring and review of supply and delivery of housing, in particular the tracking of its performance against the 6-10 year housing target and to evaluate what medium density is delivered under the changes adopted through amendments to the LEP is required.

#### *The planning proposal*

The Gateway determination required the planning proposal be:

- updated prior to community consultation to include the then draft LHS, noting that the proposed residential zone hierarchy and HIA amendments relied upon the LHS; and
- amended to reflect the final endorsed LHS should this occur before being submitted for finalisation.

This planning proposal is consistent with the endorsed LHS, because:

- the HIAs provide additional uplift contributing to Council's 6-10 year housing targets near existing infrastructure and open space;
- the residential zone hierarchy provides for housing choice and diversity by facilitating medium density housing as the highest and best use for the R3 zone;

- the residential zone hierarchy provides development standards which facilitate development consistent with the zone objectives and intended future character of localities; and
- it harmonises planning controls across the Georges River LGA, to create a consistent approach for providing new housing.

## **Section 9.1 Ministerial Directions**

### **2.2 – Coastal Management**

This Direction aims to protect and manage coastal areas of NSW.

At Gateway, the planning proposal's consistency with this Direction remained unresolved as it did not explain how it gave effect to the Georges River Estuary Coastal Zone Management Plan (CZMP).

In response, the Gateway determination included a condition which required the planning proposal to explain the consistency of the proposed provisions with the CZMP.

Prior to exhibition, the planning proposal was updated to explain that provisions relating to foreshore area and coastal hazards are in response to the CZMP. These provisions seek to ensure that the aims of the CZMP are achieved, including improvements to water quality and protection of foreshore and estuary habitats.

The inclusion of this explanation resolves the planning proposal's consistency with this Direction. The proposal is now consistent with this Direction.

### **2.6 – Remediation of Contaminated Land**

On 17 April 2020, the Minister issued this Direction to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.

Despite the Gateway determination considering land contamination and remediation under *State Environmental Planning Policy No.55 – Remediation of Land* (SEPP 55), it is necessary to ensure the planning proposal addresses this new Direction.

The planning proposal is consistent with this Direction as:

- proposed land use changes are considered to only introduce sensitive uses in zones where other sensitive uses are already permitted, which is satisfactory; and
- suitable measures under *Clause 7 – contamination and remediation to be considered in determining development applications* of SEPP No. 55 ensure that contamination and the suitability of land can be addressed as part of the development application process.

### **3.1 – Residential Zones**

This Direction seeks to encourage a variety and choice of housing types to provide for existing and future housing needs.

At Gateway, the planning proposal's consistency with this Direction remained unresolved as:

- the permissible residential density of land will be reduced in certain R3 zones; and
- the proposed changes for residential zones, in both the land use table and the rezonings from R2 to R3 and R4 zones in the HIAs rely upon the justification in the then draft LHS.

In response, the Gateway determination required that:

- the planning proposal be amended prior to community consultation to include the then draft LHS; and
- the planning proposal to be amended to reflect the endorsed LHS prior to submission for finalisation, should the LHS be endorsed by the finalisation stage. It was noted that the Department will be responsible for endorsing the LHS and determining whether Council resolved the inconsistency with this direction at finalisation stage.

Prior to community consultation, the planning proposal was updated to include the then draft LHS.

On 23 June 2021, the Department endorsed the LHS subject to conditions. As previously discussed in this section of the report, the planning proposal is consistent with the Department endorsed LHS.

The inclusion of the then draft LHS with the exhibited documents and confirmation that the planning proposal is consistent with the endorsed LHS resolves the proposal's consistency with this Direction. The proposal is now consistent with this Direction.

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

This Direction seeks to ensure the effective and safe operation of regulated airports and defence airfields. It seeks to ensure their operation are not compromised by development and that development incorporates appropriate mitigation measures if situated in noise sensitive land.

At Gateway, the planning proposal's consistency with this Direction remained unresolved because consultation with DITRDC was required due to proposed increases in building height. In response, the Gateway determination required consultation with DITRDC.

DITRDC made a submission which suggested several post-exhibition amendments to ensure the draft Georges River LEP 2021 appropriately responded to aircraft surfaces and noise impacts. These suggested amendments are discussed in **Section 3.1 – Post-exhibition changes**.

The post-exhibition amendments resolve the planning proposal's consistency with this Direction. The proposal is now consistent with this Direction.

### 4.3 – Flood Prone Land

As discussed in **Section 3.3.2 - the Department's post-exhibition changes** of this report, this Direction was revised on 14 July 2021. This revised Direction aims to ensure appropriate consideration of flood prone land in line with government policies and plans when a planning proposal seeks to create, remove or alter a zone or a provision that affects flood prone land.

At Gateway, the planning proposal's consistency with this Direction remained unresolved because provisions inconsistent with the Floodplain Development Manual 2005 were proposed. In response, the Gateway determination required these provisions be amended to align with the existing model provision.

In response to the finalisation of amendments to the '*NSW Flood Prone Land Package*' by the Minister, the draft Georges River LEP 2021 has been updated to introduce the mandatory flood planning provision (see **Section 3.3.2 - the Department's post-exhibition changes** of this report), which resolves this inconsistency with the Direction.

It is also noted that in response to the Gateway determination, the planning proposal now includes the Housing Investigations Areas Paper. This identifies the following HIAs as being affected by overland flooding:

- Peakhurst HIA;
- Penshurst HIA;

- Culwulla Street – South Hurstville HIA; and
- Rowe Street – South Hurstville HIA.

This inconsistency with this Direction is of minor significance because:

- the land that is flood affected is already developed;
- is not in a floodway, with the flooding affectation being minor;
- the current zoning already permits residential development; and
- can be adequately addressed through detailed design measures as part of the development application process, noting the proposed flooding provisions in the Georges River LEP 2021 will need to be satisfied.

## **6.2 – Reserving Land for Public Purposes**

This direction seeks to facilitate the provision and removal of reservations of land for public purposes.

At Gateway, the planning proposal's consistency with this Direction remained unresolved, because the approval of the relevant public authority when proposing to alter or reduce existing reservations of land remained outstanding.

The Gateway determination required the planning proposal to:

- clarify the consistency of the planning proposal with this Direction; and
- should the approval of public authorities be required, undertake this process during public consultation.

The planning proposal has been updated in accordance with the conditions, and there were no objection from acquisition authorities, therefore the proposal is now consistent with this Direction

## **State Environmental Planning Policies**

### **Proposed Employment Zones Reforms**

From 20 May to 30 June 2020, proposed employment zone reforms were exhibited, which seek to deliver a simplified framework that:

- is fit for purpose;
- supports the future of work;
- promotes productivity and jobs growth; and
- delivers the community's objectives set through strategic plans and planning priorities.

The supporting documentation placed on exhibition included:

- Position Paper;
- Draft Standard Instrument Principal LEP Amendment Order;
- Employment zones Implementation Plan; and
- Proposed Land Use Matrix.

The draft Georges River LEP 2021 includes employment zones, which are applied consistently with the Standard Instrument. Should the Minister make the proposed employment zone reforms, the draft Georges River LEP 2021 is capable of being amended accordingly.

## **Commencement of the Low-Rise Housing Diversity Code**

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

Provisions in the planning proposal relevant to the commencement of the LRHDC include:

- the proposed minimum lot sizes for dual occupancies in the R2 and R3 zones;
- the proposed minimum subdivision lot sizes for dual occupancies;
- changes to permissibility through the implementation of a residential zone hierarchy; and
- rezonings of the HIAs.

The planning proposal is consistent with the LRHDC, because:

- the proposed minimum lot size for dual occupancy development is consistent with the Legacy LEPs;
- it would generally permit complying development under the LRHDC;
- the endorsement of the LHS notes Georges River is likely to meet and well exceed the GSC's minimum 6–10 year housing target. This includes consideration of this planning proposal; and
- the endorsement of the LHS also requires monitoring of the delivery of medium density housing. It is considered these amendments do not limit this process.

## **Proposed Amendments to Clause 4.6**

From 31 March to 12 May 2021, the Department exhibited 'Varying Development Standards: A Case for Change' (the package). This package states:

- the current test under clause 4.6 is too complicated and unclear;
- the need for greater transparency in the decision-making process;
- reducing the risk of the misuse of clause 4.6 should be a priority; and
- there are too many exclusions from clause 4.6.

To address these concerns, the exhibited package proposed revisions to clause 4.6, being:

- the consent authority would need to be satisfied that the applicant's written request demonstrates consistency with the objectives of the relevant development standard and land use zone;
- applicants would also have to demonstrate that the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened; and
- that councils will no longer be able to exclude provisions from the operation of clause 4.6. A transitional period is proposed, so that the current exclusions in clause 4.6(8) of LEPs will continue to apply for a period of one year from commencement of the clause.

The draft Georges River LEP 2021 seeks to exclude proposed Clause 6.16 - Take away food and drink premises and restaurants or café in Zone IN2 from the operation of clause 4.6.

Should the Minister make these amendments following public exhibition, the draft Georges River LEP 2021 is capable of being amended accordingly.

## The proposed new State Environmental Planning Policy (Housing Diversity)

From 29 July to 9 September 2020, the Department publicly exhibited the new State Environmental Planning Policy (Housing Diversity) (Housing Diversity SEPP), which includes:

- consolidation of three existing, housing-related SEPPs:
  - the Affordable Housing SEPP;
  - *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004* (the Seniors Housing SEPP); and
  - *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes)* (SEPP 70).
- make amendments to remove boarding houses as a mandated use in the R2 zone;
- implement measures to mitigate the loss of existing affordable housing; and
- changes concerning seniors housing site compatibility certificates, including increasing the validity of a certificate to 5 years.

The planning proposal is consistent with the aims and objectives of the exhibited Housing Diversity SEPP, because the draft Georges River LEP 2021:

- is capable of being amended through the Housing Diversity SEPP; or
- the proposed amendments under the Housing Diversity SEPP are capable of being implemented through a future planning proposal.

## Land Use Safety Planning Considerations

The Georges River LGA is affected by the Moomba Sydney Ethane Pipeline (the pipeline), a dangerous goods pipeline.

Though the risks to life and property from this infrastructure is low, it is necessary to ensure the draft Georges River LEP 2021 responds appropriately.

The Department is responsible for preparing and administering state-wide policies and guidelines for hazard risk assessments and land use safety planning. These are known as the NSW Land Use Safety Planning Guidelines (the Guidelines)<sup>5</sup>.

The Guidelines assess risk in two different ways:

- individual risk – risk from the hazardous infrastructure to an individual; and
- societal risk – risk to the surrounding community. Societal risk measures the risk of incidents from the hazardous infrastructure that would critically injure a significant number of the population surrounding the infrastructure.

The Department considers this planning proposal satisfies the relevant risk criteria requirements of the Guidelines, because it retains existing profiles of land use permissibility and associated development standards which regulate population and density near the pipeline.

---

<sup>5</sup> *Hazardous Industry Planning Advisory Paper (HIPAP) 10 – Land Use Safety Planning.*

Impacts from the pipeline can be further regulated through the development application process. Where development (such as high density residential, commercial or sensitive uses such as hospitals, schools, child care centres and aged care facilities) proposes to increase density near dangerous goods pipelines under existing planning controls, the risk criteria for land use safety planning published under HIPAP No.4 will need to be considered.

## 5 Drafting

The Department has consulted with the following stakeholders after the assessment.

**Table 3 Consultation following the Department's assessment**

| Stakeholder                   | Consultation                                                                                                                                                                                                | The Department is satisfied with the draft LEP                                                |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Mapping                       | A new LEP maps package has been prepared by Council and the Department's ePlanning teams and meets the technical requirements.                                                                              | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No, see below for details |
| Council                       | Council was consulted on the terms of the draft instrument under clause 3.36(1) of the Act.<br><br>On 5 July 2021, Council confirmed that it was agreeable with the draft and that the plan should be made. | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No, see below for details |
| Parliamentary Counsel Opinion | On 7 September 2021, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made.                                                                                             | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No, see below for details |

## 6 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 draft Georges River LEP 2021:

- has strategic merit being consistent with the District Plan, the LSPS, SEPPs and Section 9.1 Ministerial Directions;
- is consistent with the Gateway Determination; and
- adequately addresses issues raised during community consultation, and there are no outstanding agency objections.



Kris Walsh  
Manager, Eastern and South Districts



Laura Locke  
Director, Eastern and South Districts



Assessment officer

Alexander Galea  
Senior Planning Officer, Eastern and South Districts  
8289 6793

## Appendices

**Appendix A** – Detailed Response to TfNSW Submission

**Appendix B** – Detailed Response to EES Submission

**Appendix C** – Detailed Response to EPA Submission

## Attachments

**Attachment Report** – Accelerated Housing