



IRF23/1014

Plan finalisation report – PP-2021-2911

Inner West LEP 2022, 58-76 Stanmore Road, 2-20
Tupper Street and 3-9 Alma Avenue, Stanmore

May 2023

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Plan finalisation report – PP-2021-2911

Subtitle: Inner West LEP 2022, 58-76 Stanmore Road, 2-20 Tupper Street and 3-9 Alma Avenue, Stanmore

© State of New South Wales through Department of Planning and Environment 2023 You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning 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 [March 23]and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning 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.

Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

1	Introduction.....	2
1.1	Overview.....	2
1.1.1	Name of draft LEP	2
1.1.2	Site description	2
1.1.3	Purpose of plan.....	4
1.1.4	State electorate and local member.....	7
2	Gateway determination and alterations	8
3	Public exhibition and post-exhibition changes	8
3.1	Submissions during exhibition.....	8
3.1.1	Submissions supporting the proposal	8
3.1.2	Submissions objecting to and/or raising issues about the proposal.....	8
3.1.3	Other issues raised.....	4
3.2	Advice from agencies.....	4
3.3	Post-exhibition changes.....	3
3.3.1	Council resolved changes	3
3.3.2	The Department's recommended changes	5
3.3.3	Justification for post-exhibition changes.....	Error! Bookmark not defined.
4	Department's assessment.....	8
4.1	Detailed assessment.....	9
5	Post-assessment consultation	20
6	Recommendation.....	21
	Attachments	Error! Bookmark not defined.

1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Inner West Local Environmental Plan 2022 (Amendment No. 2).

The planning proposal seeks to rezone 58-76 Stanmore Road, 2-20 Tupper Street and 3-9 Alma Avenue, Stanmore (the site) and amend associated development standards to enable residential flat buildings and mixed-use development comprising up to 120 dwellings and 1,550m² of commercial and club floor space.

1.1.2 Site description

The site is a rectangular lot on the southern side of Stanmore Road (**Figure 1**), approximately 9,128m². The eastern and western boundaries provide frontages to Alma Avenue and Tupper Street which are accessible by vehicles and pedestrians. The site has a fall of approximately 11m from the northeast to southwest. The site comprises 16 lots, including an allotment currently owned by Ausgrid which contains an electricity substation.

The site is occupied by:

- a part 3 and 4 storey registered club premises known as the Cyprus Club (**Figure 2**) with frontage to Stanmore Road;
- at-grade parking accessed through Alma Avenue;
- an electricity substation fronting Alma Avenue;
- a six single storey detached dwellings fronting Tupper Street; and
- a vacant grassed area on the southern portion of the site.

The site is surrounded by a mix of housing typologies in the R1 General Residential and R2 Low Density Residential zones. The site is adjoined by the Kingston South Heritage Conservation Area in the north which comprises two storey Victorian terraces. On the western side of Alma Avenue are 1-2 storey dwellings and on the eastern side of Tupper Street are 3 and 4 storey residential flat buildings and single storey detached dwellings. The site is adjoined to the south by a 4 storey residential flat building.

The site is well serviced by train and bus transport and is in close proximity to Enmore and Newtown Commercial Centres, educational facilities, public open spaces, and recreation facilities.

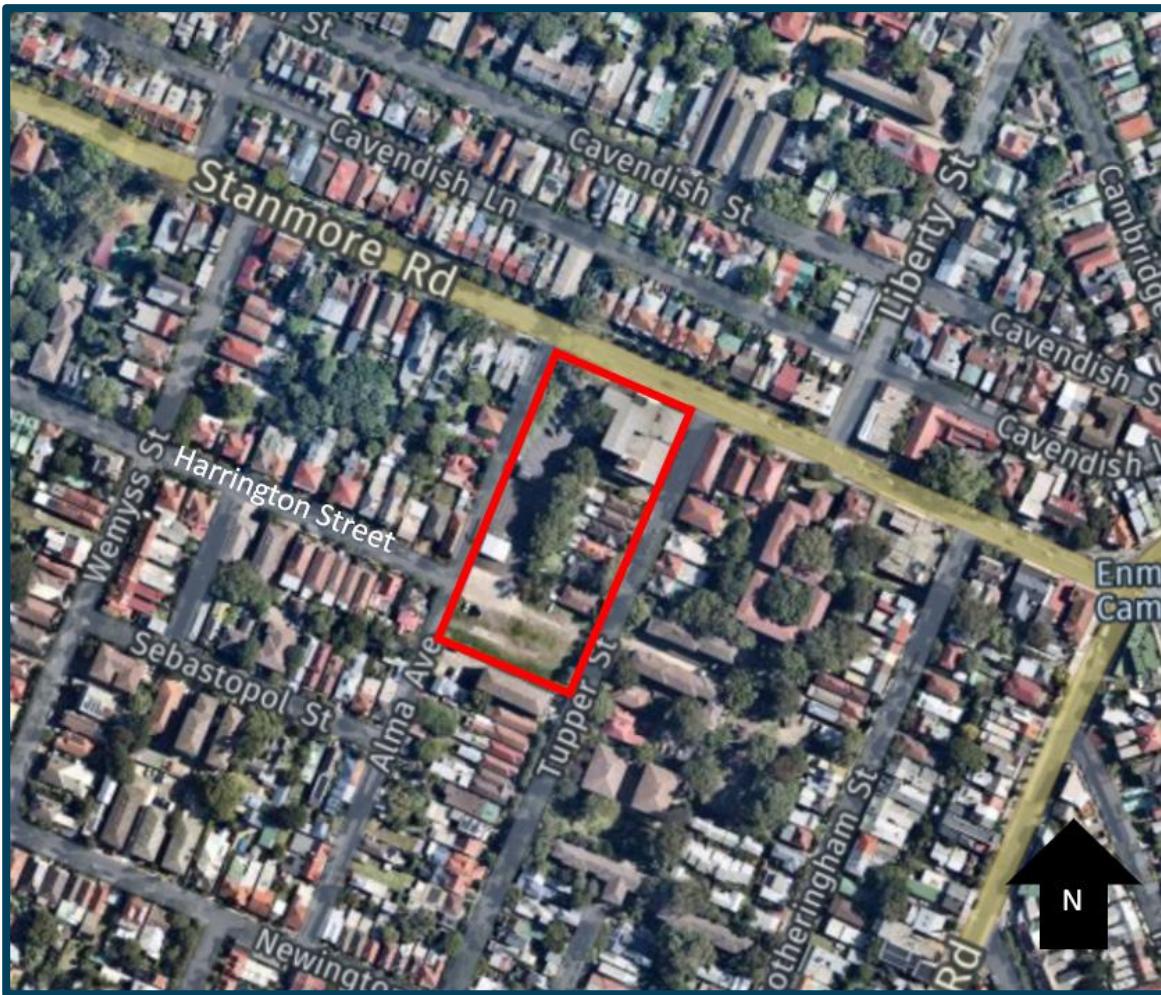


Figure 1: The site highlighted red (source: nearmaps)

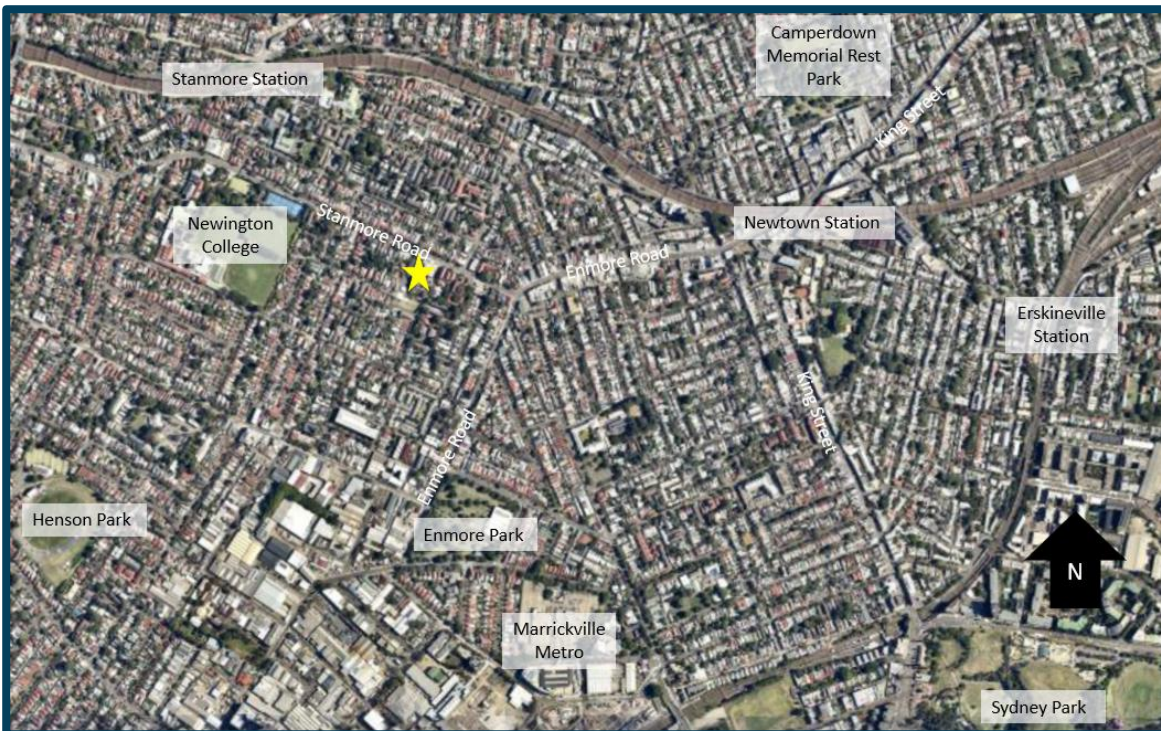


Figure 2: Site context (source: nearmaps)

1.1.3 Purpose of plan

The table below outlines the current and proposed controls for the LEP.

Table 1 Current and proposed controls

Control	Current	Proposed submitted for finalisation
Zoning	R2 Low Density Residential RE2 Private Recreation SP2 Infrastructure (Local Road and Electricity Supply)	MU1 Mixed use (formerly B4 Mixed Use – see Section 3.3.2 Department's post exhibition changes of the report) R1 General Residential
Height	9.5m (R2 zone) 14m (remainder)	21m – Buildings A, B & C 17m – Building D 11m – Building E
Floor space ratio	0.6:1	1.75:1- Sites A & B 1:1 - Site C
Additional local provisions	Nil	New clause requiring: <ul style="list-style-type: none"> • Preparation of a site-specific development control plan (DCP), and • Development will not result in a significant increase to the amount of traffic in the area
Land Reservation Acquisition	Land reservation acquisition for 'local road' on Alma Avenue frontage	Dedicate Alma Avenue frontage to accommodate widening of Alma Avenue
Schedule 1 – Additional permitted uses	Nil	Add clause to permit (with consent) development for the purposes of a residential flat building, but only as part of a mixed-use development that includes a minimum 1,550m ² GFA for Registered Club and commercial premises purposes.
Key Sites map	Not identified	Identify the B4 zone portion of the site to denote the new Schedule 1 clause - additional permitted uses.

The Development Concept Scheme

The site has been split into Site A, B and C (**Figure 3**) with the intention of facilitating a transition in height and floor space ratios with the surrounding area.

The indicative concept scheme has been submitted with the planning proposal showing (**Figures 4 and 5**):

- Four buildings ranging in height from 3-6 storeys, including:
 - one mixed use building (Building A);
 - two residential flat buildings (Buildings C & D); and
 - townhouses (Building E) ;
- New publicly accessible open space (urban pocket park) addressing Alma Avenue;
- Publicly accessible central plaza between buildings A and B;
- Central communal open space between buildings C and D;
- Relocation of electricity substation; and
- Road acquisition and widening on Alma Avenue.

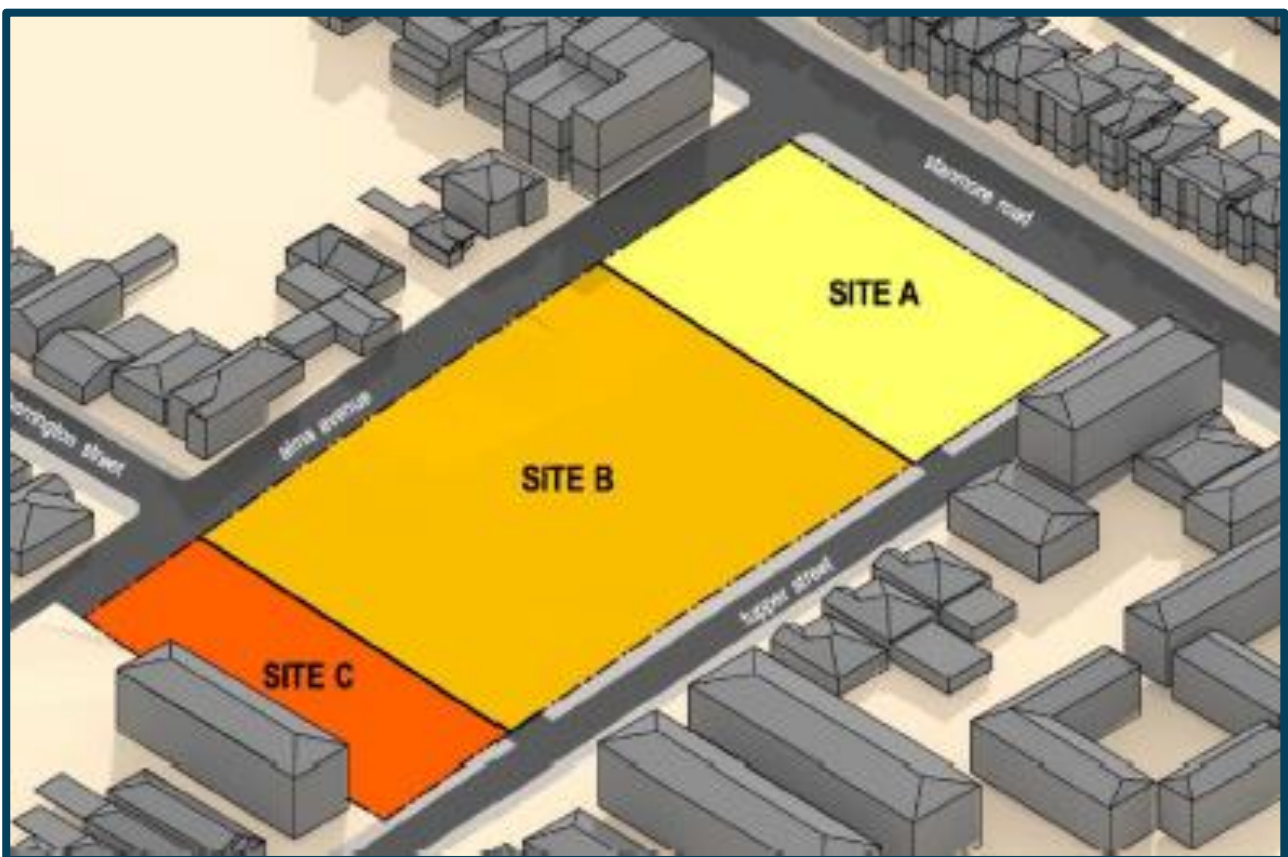


Figure 3: Site split into A, B & C (source: Planning Proposal)

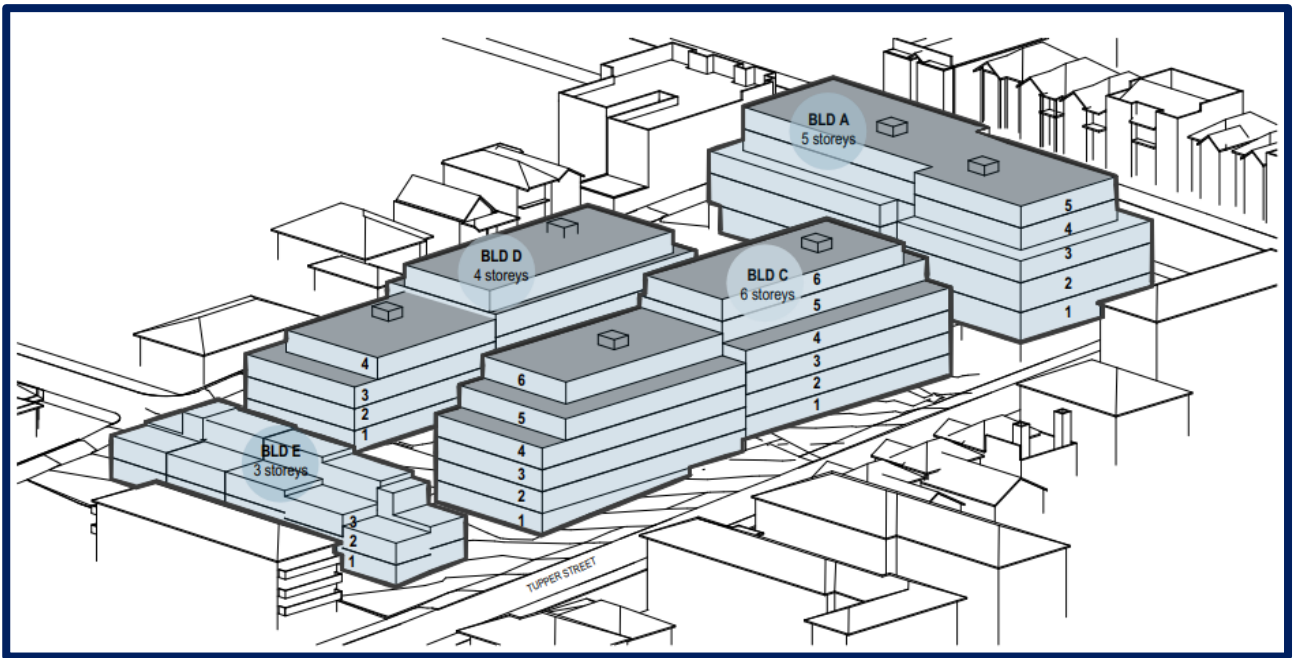


Figure 4: Massing diagram (source: Planning Proposal)

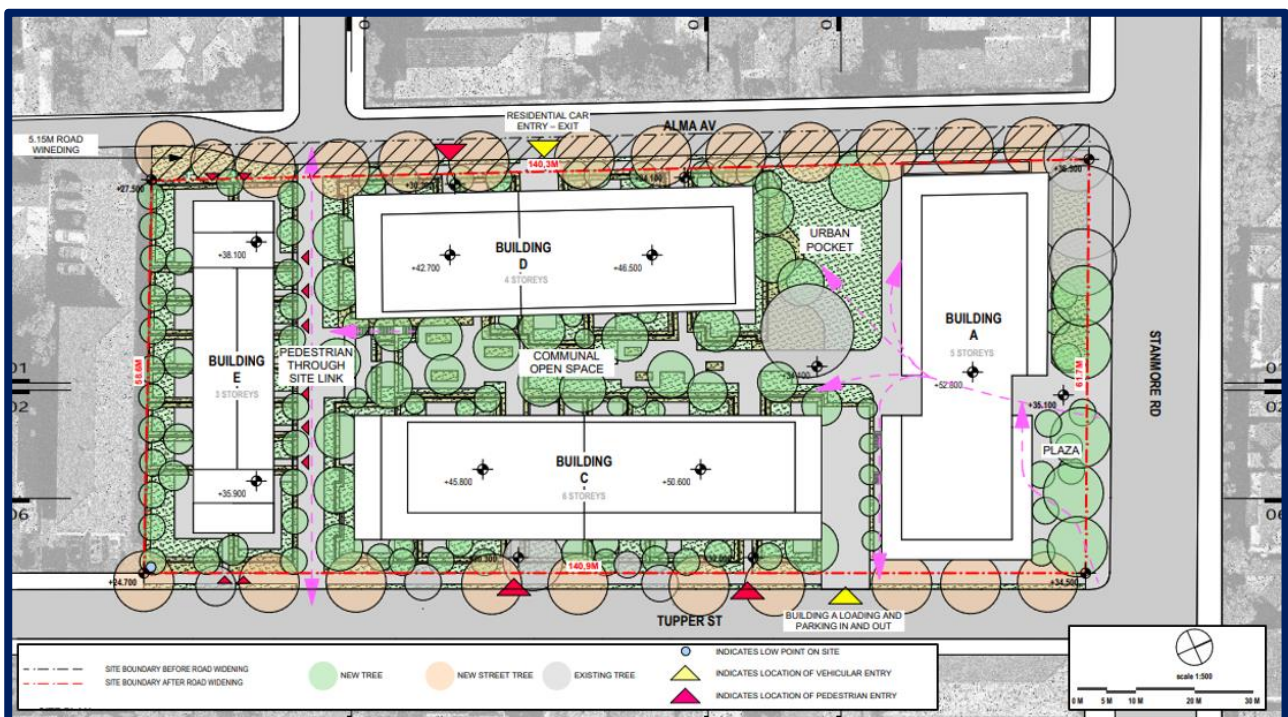


Figure 5: Indicative site plan (source: Planning Proposal)

The Development Control Plan

The exhibited planning proposal included a provision requiring the preparation of a site specific DCP in the LEP prior to the issuing of development consent. This was supported by a Site Specific DCP Outline dated 13 May 2022 to inform the preparation of a future DCP.

This DCP framework document includes the following matters for a future DCP to address:

- building setbacks;
- building storeys;

- solar access;
- pedestrian connectivity; and
- traffic, vehicular access and sustainable transport alternatives.

It is understood that Council and the proponent are seeking to prepare and finalise a site specific DCP.

Public Benefit Offer

On 29 November 2022, a revised public benefit offer was submitted to Inner West Council, including (**Figure 5**):

1. road widening and associated works on Alma Avenue;
2. common open space adjacent to Alma Avenue;
3. 'Plateia' public plaza adjacent to Stanmore Road;
4. through site link between Stanmore Road, Alma Avenue and Tupper Street;
5. shareway and through site link between Tupper Street and Alma Avenue;
6. Public Art located in 'Plateia'; public plaza; and
7. streetscape planting to Alma Avenue and Tupper Street.

Council and the proponent are negotiating this public benefit offer which has not been publicly exhibited.

The revised public benefit offer only seeks to dedicated the widening of Alma Avenue (item 1 above) to Council – an existing LEP requirement. The proposed open spaces are to be publicly accessible and not dedicated to Council.

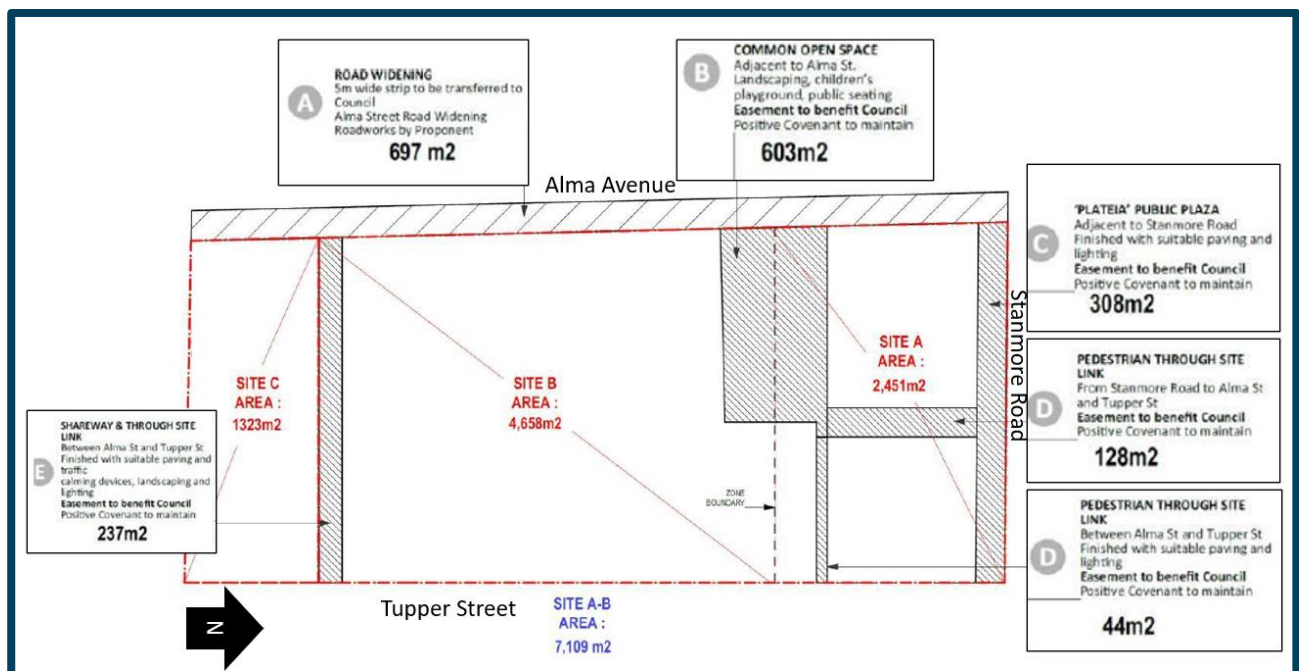


Figure 5: Site plan of public benefit offer items (source: Public benefit offer dated 29 November 2022)

1.1.4 State electorate and local member

The site falls within the Newtown state electorate. Ms Jenny Leong MP is the State Member.

The site falls within the Grayndler federal electorate. The Hon Anthony Albanese is the Federal Member.

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

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

2 Gateway determination and alterations

The Gateway determination issued on 7 June 2021 (**Attachment B**) determined that the proposal should proceed subject to conditions.

Council has met all the Gateway determination conditions, except for adhering to the timeframe to complete the LEP.

3 Public exhibition and post-exhibition changes

The proposal was publicly exhibited by Council from 18 May 2022 to 19 June 2022 in accordance with the Gateway determination.

A total of 222 community submissions were received. 55% objected to the proposal, 41% in principle supported the proposal, and 4% were neutral. All agencies except the Greater Cities Commission made a submission with no objections raised.

To the team's knowledge, no MP's have made any written representations regarding the proposal.

Council's post-exhibition resolution

On 6 December 2022, Inner West Council resolved to conditionally support the proposal post-exhibition subject to the deferment of the LEP until a site specific DCP and VPA are finalise.

The Department has considered Council's resolution and requested amendments and does not support the deferment of the plan until a site specific DCP and VPA are finalised – see **Section 3.3.2 – Department's post-exhibition changes** of this report for further discussion.

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

Submissions in favour expressed support for the planning proposal, because;

- of opportunities for economic growth and jobs;
- it will support local social and sporting organisations through the revitalisation of the site and retention of non-residential/ club uses;
- the proposed new through-site links and publicly accessible square which will activate the surrounding area connecting it further to the Enmore Road Special Entertainment Precinct; and
- the provision of housing diversity and retaining the cultural significance of the club to Sydney's Cypriot community.

3.1.2 Community submissions raising issues with the planning proposal

Community submissions raising objections with the proposal raised the following issues:

- Traffic;
- Car parking;
- Local character;
- Excessive building height;
- Overshadowing;
- Noise;
- Loss of community club and uses; and
- Open space and tree canopy.

These issues along with Council's and the Department's response are discussed in further detail below.

Traffic

Community submissions received raised concerns that:

- existing infrastructure is inadequate to support traffic and access on Tupper Street and the surrounding road network;
- future development would compound traffic and access issues;
- the Planning Proposal's Traffic Report inadequately assesses and responds to the traffic impacts, from construction through to ongoing operation;
- current safety concerns for pedestrians and cyclists in surrounding narrow streets would be exacerbated by increased vehicle traffic; and
- increased hazard and safety issues from the right turn from Stanmore Road to Tupper Street.

Council Response

Council noted that the planning proposal incorporates several measures to improve traffic flow and minimise impact to surrounding streets including:

- 5m road widening along Alma Avenue with footpaths on both sides of the road to provide for two-way traffic flow; and
- removal of on street parking on the western side of Tupper Street, in between Stanmore Road and the proposed new site access driveway to enable adequate width for two-way traffic flow.

In addition, the provision of a pedestrian through-site link between Harrington Street and Tupper Street will provide pedestrian permeability and help to improve surveillance and safety around the site and surrounding area.

Detailed traffic control measures will be included in the site specific DCP which will be considered by Council's Local Traffic Committee and exhibited to the public.

Department's Assessment

Council's response is adequate, with traffic and car parking discussed further in **Section 3.2 – Advice from agencies** of this report.

Car Parking

Community submissions received raised concerns that:

- the proposal includes insufficient on-site car parking to cater for the increased demand, exacerbating demand for on-street parking;
- existing on-street car parking is insufficient for nearby residents and commercial services and removing on street parking on Tupper St and overflow parking on vacant lot at rear of site would make this problem worse; and
- proposed "No parking/No stopping solution" is an inadequate response to address parking issues and is unfair to existing residents.

Council Response

Council noted that:

- any future development will be required to comply with the Marrickville DCP 2011 parking rates for residential and commercial development. The proponent has indicated that they wish to vary those rates for the club use, and this would be addressed when developing the site specific DCP; and
- car parking will be further considered during the DA process, including:
 - provision of a detailed traffic parking report responding in detail to the specific site building uses; and
 - road conditions and proposed treatments to for having a functional system.

Department's Assessment

Council's response is adequate, with traffic and car parking discussed further in **Section 3.2 Advice from agencies** of this report.

Local character

Community submissions received raised concerns that the proposal would negatively impact the existing local character of the area, including that the:

- character of future development will not fit the local building typology context;
- proposal is unsympathetic to the existing heritage streetscape and aesthetic;
- setbacks proposed are inconsistent with existing context;
- removal of six terrace residences would add to loss of local character; and
- proposal would remove the leafy streetscape feel.

Council Response

Council noted that:

- the concept scheme demonstrates that future developments could include a tree lined streetscape with a pedestrian connection from between Harrington and Tupper Streets and new civic square. This would realise an improved and more permeable ground plane compared with the existing Club site which contains a carpark covering approximately 75 percent of the site;
- the landscape design shows capability for deep soil areas along the street frontage. This includes 3m width along Alma Avenue, 5m width along Tupper Street and along Stanmore Road. This will provide the capacity for additional tree plantings to maintain a leafy streetscape.

These measures will ensure that the proposed design provides a contextual response to the existing streetscape and local setting; and

- the future site-specific DCP will include objectives and controls requiring contextual responses to the neighbouring area as well as landscaping and tree canopy controls to achieve good design outcomes. The DCP will be reviewed by Council's Architectural Excellence and Design Review Panel.

Department's Assessment

Council's response is adequate, with built form impacts discussed further in **Section 4.1.6 – State Environmental Planning Policy No.65** of this report.

Excessive building height

Community submissions received raised concerns that the building height:

- is excessive and will result in loss of views;

- will set a precedence for the Inner West LGA;
- will have a negative impact to views affecting property prices; and
- are inconsistent with the Marrickville LEP 2011.

Council Response

Council considers that the proposed maximum heights are appropriate, because the site is large enabling future buildings to be sited and modelled to minimise impacts providing for compatibility with surrounding development.

Council also noted that the future site specific DCP will be required to set guidelines relating to built form transition, height and setbacks and landscaping.

Department's Assessment

Council's response is adequate, with built form impacts discussed further in **Section 4.1.6 – State Environmental Planning Policy No.65** of this report.

Overshadowing

Community submissions received raised concerns that overshadowing from the proposed development will impact existing residential development and public spaces, particularly on Tupper St and Alma Ave.

Council Response

Council noted that the shadow diagrams submitted with the planning proposal demonstrate that sufficient solar access can be provided to surrounding residential buildings to meet the requirements of the Apartment Design Guidelines and Marrickville DCP 2011.

Department's Assessment

Council's response is adequate, with built form impacts discussed further in **Section 4.1.6 – State Environmental Planning Policy No.65** of this report.

Noise

Community submissions received raised concerns with noise pollution during construction as well as the future use of the club for events and outdoor dining areas.

Council's Response

Council noted that:

- the noise from construction works will be addressed through conditions of consent at the development application stage; and
- the site specific DCP requires new development to provide acoustic treatment to not unreasonably impact on the amenity of future and surrounding residents as well as any other sensitive land uses.

Department's Assessment

Council's response is adequate.

Loss of community club and uses

Submissions received raised concern with the loss of the club and public meeting spaces.

Council's Response

Council noted:

- that it's intended for the Cyprus Community Club to remain on the site, with the proposed LEP allowing residential flat buildings on the northern portion of the site only if a minimum

of 1,550m² of GFA for the purposes of a Registered Club and Commercial Premises is provided; and

- the retention of the Club would encourage the continued operation of community facilities including a library, creche, soccer team offices, Greek language school, social activities, lecture rooms, dancing rooms, musical performances, and festivals. It is also noted that the Indicative Scheme shows potential for new outdoor civic spaces, capable for facilitating social meeting spaces.

Department's Assessment

Council's response is adequate.

Open space and tree canopy

Community submissions received raised concern over pressure on existing open space, the vacant land to the rear of the site should be retained for open space, and more tree planting and landscaping should be provided on site.

Council's Response

The planning proposal provides potential for open space and tree canopy on the site including:

- a 600m² publicly accessible urban pocket park;
- provision of 2,224m² deep soil area located along the site frontage and central public square; and
- retention of 10 mature trees on the site, including along Stanmore Road, Tupper Street and within the centre of the site.

Department's Assessment

Council's response is adequate, noting:

- the site specific DCP provision in the LEP requires:
 - landscaping, including the provision of trees, vegetation and soft landscaping areas be addressed; and
 - public access to the proposed thru-site links and open spaces must be addressed.
- adequate deep soil areas can be provided on site in accordance with State Environmental Planning Policy No.65 and the associated Apartment Design Guide (ADG).

3.1.3 Other issues raised

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

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with 12 agencies:

- | | |
|--|------------------------------------|
| • Heritage NSW; | • Ausgrid; |
| • Environment, Energy and Science Group; | • Greater Cities Commission; |
| • Transport for NSW; | • Department of Education; |
| • Sydney Water; | • Sydney Airport Corporation; |
| • Water NSW; | • Civil Aviation Safety Authority; |

- Commonwealth Transport, Regional Development and Communications; and
- Air Services Australia

Submissions were received from all agencies except the Greater Cities Commission. No objections were raised and all matters have been addressed and resolved.

Transport for NSW

TfNSW has no objection to the planning proposal, but has provided the following comments relating to detailed traffic and parking assessment for consideration in future stages of the planning process:

- **Removal of Right in/Right out movements** - Please note that TfNSW still recommends removing the right in/right out movements at Tupper Street/Stammore Road and Alma Avenue/Stammore Road intersections to improve the safety. It is, however understood that removal of these movements would have impacts on the accessibility to the wider area which needs to be investigate as part of a separate study. As such, maintaining the existing movement arrangements at these intersections is acceptable.
- **'No Stopping/No Parking' on Tupper Street** - Please also note that proposed 'no stopping/no parking' restriction has to be implemented on Tupper Street between Stammore Road and the proposed site access driveways as discussed in the responses. It is understood that this proposal would result in reduction of on-street parking on Tupper Street. Consideration shall be given to provide additional parking spaces within the site to compensate the loss of on street parking on Tupper Street in consultation and agreement with the Council.
- **Traffic Management Plan** - A 'Traffic Management Plan' should be prepared for the proposed two-way movements on Alma Avenue and submitted to the Local Traffic Committee.

Council's response

Further traffic modelling was requested by Council officers from the proponent to respond to TfNSW's submission.

Council's traffic engineers have considered the reports and revised traffic modelling and raise no objections, with traffic and parking will be addressed in detail as part of the site specific DCP and as part of the development application process.

Department's Assessment

Council's response is considered adequate, noting:

- a requirement for traffic impacts on surrounding street is included as a site specific provision;
- the public benefit offer provides a mechanism to deliver the required widening of Alma Avenue. This will improve road capacity and vehicular movement on this road and the surrounding area; and
- the comments provided by TfNSW can be further considered during the development application process, including:
 - removal of the right in/right out movement at Tupper Street/Stammore Road and Alma Avenue/Stammore Road;
 - 'no stopping/no parking' on Tupper Street; and
 - preparation of the traffic management plan for two-way movement on Alma Avenue.

Ausgrid

Ausgrid are responsible for electricity supply and currently have a small substation on the site at Alma Avenue. They raised no objection to the proposal, including the partial rezoning of the existing substation site from SP2 Electricity Distribution and Transmission to R1 General Residential.

Council's response

The substation will be relocated at a future stage and Council understand that the proponent has been in negotiations on this matter with Ausgrid.

Department's Assessment

Council's response is considered adequate.

Department of Education (Schools Infrastructure NSW)

SINSW advised they had no objection to the Planning Proposal and the number of potential students that would be generated by new residential development could be accommodated by surrounding schools.

Council's Response

Council will continue to work with Schools Infrastructure NSW to support the provision of education infrastructure in the Inner West LGA.

Department's Assessment

The Department encourages collaboration between Schools Infrastructure NSW and Inner West Council to ensure adequate deliver of education infrastructure.

Sydney Airport Corporation

They did not raise an objection.

Council's Response

Council noted this submission.

Department's Assessment

This submission is noted.

Civil Aviation Safety Authority

CASA has no objections to the Planning Proposal or the Approval of 23 December 2020.

CASA will assess the cranes from an airspace obstacle perspective under the Airspace Regulations when requested by Sydney Airport.

Council's Response

Council noted this submission.

Department's Assessment

This submission is noted.

Commonwealth Transport, Regional Development and Communications

On 23 December 2020, a requirement for approval? from the Commonwealth Department of Infrastructure Regional Development of Infrastructure, Transport, Regional Development, Communications, and the Arts (former Dept. Infrastructure, Transport, Regional Development and Communications) was issued to the proponent.

This approval included the requirement of a maximum building height defined as being below Australian Height Datum (RL) 55.4. This was shown in the exhibited Indicative Designs in 2022 along with the position of overhead cranes at construction stage.

Council's Response

Council noted this submission.

Department's Assessment

This submission is noted and Council's response is considered adequate.

Air Services Australia

No objections or further comments were raised, noting:

- Air Services Australia deferred to the previous 2020 referral advice which did not object the planning proposal; and
- that future development will not have an impact to the safety, efficiency, or regularity of existing, or future air transport operations into or out of Sydney aerodrome.

Council's Response

Council noted this submission.

Department's Assessment

This submission is noted and Council's response is considered adequate.

3.3 Post-exhibition changes

3.3.1 Council's post-exhibition changes

In response to community and agency submissions, Council officers recommended the following post-exhibition changes:

Deferral of the LEP's commencement until the DCP and VPA are finalised

Council's Justification

Council considers that the site-specific DCP is required to:

- address environmental, built form and traffic and parking impacts;
- delivery of road-widening; and
- public domain enhancements;

Council considers that the delivery of affordable housing relies on a Planning Agreement to be in place before the LEP comes into effect.

Council also has concerns that despite the proposed LEP provision requiring preparation of a site-specific DCP, the *Environmental Planning & Assessment Act 1979* (the Act) allows proponents to proceed with the Concept DA without having a site-specific DCP in-place. Council considers this overrides the LEP requirement regarding provision of DCP prior to any development consent being granted through addressing design provisions at the Concept DA stage.

Department's Assessment

The Department notes this post-exhibition change by Council - see **Section 3.3.2 - the Department's Post-Exhibition Changes** of this report for further discussion.

Provision of affordable housing*Council's Justification*

Council considers that the inclusion of the requirement of affordable housing within the LEP will ensure the delivery of affordable housing on the site. Council has not identified an affordable housing rate.

Department's Assessment

The Department notes this post-exhibition change by Council - see **Section 3.3.2 - the Department's Post-Exhibition Changes** of this report for further discussion.

Preserves significant trees and provides adequate landscaping and deep soil planting incorporating measures to reduce urban heat through water sensitive urban design and mature tree planting*Council's Justification*

Council considers that the inclusion of the requirement for adequate landscaping and deep soil planting within the LEP adequately addressed concerns raised in submissions.

Department's Assessment

The Department notes this post-exhibition change by Council - see **Section 3.3.2 - the Department's Post-Exhibition Changes** of this report for further discussion.

Supports sustainable transport modes, minimises traffic congestion and reduces private car dependency*Council's Justification*

Council considers that the inclusion of the requirement for adequate landscaping and deep soil planting within the LEP adequately addressed concerns raised in submissions.

Department's Assessment

The Department notes this post-exhibition change by Council - see **Section 3.3.2 - the Department's Post-Exhibition Changes** of this report for further discussion.

Incorporates environmentally sustainable design principles, including achieving a minimum 5 star Green Star Communities rating or minimum 5 Star Green Star Buildings rating.*Council's Justification*

Council considers that the inclusion of the requirement for sustainable design principles, including achieving a minimum 5 star Green Star for development within the LEP adequately addresses concerns raised in submissions.

Department's Assessment

The Department notes this post-exhibition change by Council - see **Section 3.3.2 - the Department's Post-Exhibition Changes** of this report for further discussion.

Provide new publicly accessible open spaces, including through-site walking and cycling links, landscaping and public plaza*Council's Justification*

Council considers that the inclusion of the requirement for providing new publicly accessible open spaces within the LEP adequately addressed concerns raised in submissions.

Department's Assessment

The Department notes this post-exhibition change by Council - see **Section 3.3.2 - the Department's Post-Exhibition Changes** of this report for further discussion.

Increase the minimum gross floor area for club uses from 1,500m² to 1,550m² for club and commercial uses

Council's Justification

Council has amended the floor space requirement to 1,550m² to ensure the requirement is consistent with the Gateway determination.

Department's Assessment

This post-exhibition amendment by Council is appropriate, because it:

- addresses inconsistencies in the exhibition package; and
- aligns with the Gateway assessment and determination.

Amendments to the requirements of the DCP provision

Council's Justification

Council has made amendments to the proposed site specific DCP provision in the LEP to ensure it responds to the post-exhibition amendments to the LEP and concerns raised in submissions.

It is also understood Council made these amendments to be consistent with other site specific DCP provisions in the Inner West LEP 2022.

Department's Assessment

This post-exhibition amendment by Council is appropriate, because it:

- gives effect to the proposed provision, including the exhibited site specific DCP outline document that was publicly exhibited;
- address community submissions, including and
- ensure the requirements of the provision are consistent with other site specific DCP provisions in the Inner West LEP 2022 as relevant. These include clauses 6.25(4) and 6.27(6).

3.3.2 The Department's post-exhibition changes

Following the receipt of the revised planning proposal from Council, the following and further changes are recommended as follows.

Deferral of the LEP's commencement until the DCP and VPA are finalised

This Council initiated post-exhibition change is not supported, because:

- the LEP includes a provision requiring the preparation of a site specific DCP. The Act provides for a Stage 1 Concept DA to satisfy this requirement; and
- the revised public benefit offer that may be included in a finalised VPA:
 - addresses an existing road widening requirement in Council's land reservation acquisition mapping already in Council's LEP; and
 - identifies the provision of publicly accessible open spaces, with access to be secured through easements on the land's title. This is consistent with the exhibited planning proposal and which addressed condition 1(b) of the Gateway determination.

As such, these matters are either already addressed in the Inner West LEP 2022 or are capable of being addressed without requiring deferral until the VPA is finalised.

The site specific DCP gives adequate regard to the provision of publicly accessible open space on the site and the ongoing VPA process.

The public benefit offer is yet to be exhibited, which raises concerns about the ongoing deferral of the LEP and certainty about the plan coming into force.

Provision of affordable housing

While the Department fully supports the provision of affordable housing in new development projects such as this, this Council initiated post-exhibition change to include affordable housing in the LEP cannot be supported. This is because under section 7.32(3)(b) of the EP&A Act any condition imposed relating to contributions for affordable housing on a development consent must be authorised by a LEP and must be in accordance with a Council scheme for dedications or contributions set out in or adopted by the LEP.

To date, Inner West Council has not sought to amend the Inner West LEP 2022 to reference an affordable housing contribution scheme to levy for affordable housing on this site.

It should be noted that as part of the Department's review and approval of Council's Local Housing Strategy, Condition 8 of this approval recommended Council adopt a Scheme to support the outcome for affordable housing to be included in Council's LEP. This approval was issued on 8 July 2021 and since this time council hasn't adopted an Affordable Housing Contribution Scheme.

In the absence of an endorsed affordable housing contribution scheme, the Department strongly encourages the proponent and Council to engage further on this matter to ensure other and future proposals are able to apply an adopted Scheme.

It is also considered this matter does not adequately address submissions.

Incorporates environmentally sustainable design principles, including achieving a minimum 5 star Green Star Communities rating or minimum 5 Star Green Star Buildings rating

The Department supports sustainable development outcomes; however Council's proposed post-exhibition change to require a minimum 5 star Green Star achievement is not supported because:

- only BASIX requirements can apply to residential development, see:
 - clause 1.5 of State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP); and
 - clause 7 of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP).

It is noted that this does not preclude the voluntary provision of additional BASIX targets. This can be addressed through the separate VPA process;

- the non-residential requirements of the Sustainable Buildings SEPP do not provide alternative pathways to NABERS;
- no justification has been provided to justify this approach to sustainability requirements for the site, including feasibility analysis;
- it would restrict the ability to utilise other acceptable verification methods provided in the National Construction Code (NCC) to demonstrate sustainability outcomes. It is noted:
 - that the NCC includes sustainability requirements for Class 6 and 9 buildings which are the intended non-residential outcomes for the site; and
 - this does not preclude the voluntary provision of additional sustainability outcomes. This can be addressed through the separate VPA process.
- it would be inconsistent with commitments made by the NSW Government under the ABCB Intergovernmental Agreement to limit local governments from setting prescriptive standards that override the NCC; and
- it is not an appropriate response to community submissions.

Provide new publicly accessible open spaces, including through-site walking and cycling links, landscaping and public plaza

This post-exhibition change to require the provision of open space on the site proposed by Council is not supported, because the exhibited planning proposal did:

- identify certain open space areas will be secured as publicly accessible through the applications of easements registered on the land title in response to Gateway condition 1(b). This is adequately addressed the Gateway condition, as it provides a suitable mechanism to ensure access to this open space. It is noted also that Council supported this option as the planning proposal authority; and
- not seek to dedicate any of the proposed publicly accessible open spaces to Council through either:
 - zoning any part of the site for RE1 Public Recreation purposes with the associated identification on the land acquisition map and nominated acquisition authority as required by the Act; or
 - implement an incentive approach for the delivery of on-site public open space. Council has not supported the provision of on-site infrastructure with any feasibility analysis, associated justification or details for a development incentive provision, including open space quantum.

An LEP cannot mandate that land is made available for public use, unless such a requirement is clearly adopted to comply with the relevant statutory requirements of the Act, including section 7.4 and section 7.11.

Nonetheless, the site specific DCP provision in the LEP appropriately provides for the consideration and provision of open space area(s) on the site before future development can proceed. This doesn't preclude council negotiations on mechanisms to secure public access and can be further supported by a VPA with any future developer. The site specific DCP provision in the LEP gives adequate regard of this process while also making sure it is a consideration for future development of the site.

Preserves significant trees and provides adequate landscaping and deep soil planting incorporating measures to reduce urban heat through water sensitive urban design and mature tree planting

State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) and the associated Apartment Design Guide (the ADG) include requirements for deep spoil areas and landscaping for residential flat building development. The supporting development concept scheme demonstrates that future development can achieve compliance with SEPP 65 - see **Section 4.1.6 - SEPP 65** of this report for further discussion.

A separate LEP provision addressing this matter is considered unnecessary, as this matter has been included in the site specific DCP provision in the LEP and SEPP 65 already requires the provision of communal and private open space for residential forms of development. These existing approaches will be dealt with as part of any future development application process. This assessment will include suitable location of future buildings in relation to landscaping and deep soil areas.

Supports sustainable transport modes, minimises traffic congestion and reduces private car dependency

The proposed LEP provision requiring sustainable transport modes to minimise traffic and reduce private car dependency is recommended to be removed from the LEP and is included as a site specific DCP in the LEP requirement, because:

- this appropriately responds to community submissions;

- TfNSW has not objected to the proposal nor required this provision as part of its submission; and
- this approach is consistent with Council's approach more broadly to address sustainable transport options as DCP controls.

The proposed site-specific controls for the site to be included in the LEP require that the development consent authority needs to be satisfied that in approving any development it will not result in significant increase in vehicular traffic in the surrounding areas; with express mention of the adjoining streets.

Amendments to the requirements of the DCP provision

The proposed aircraft noise site specific DCP in the LEP requirement has been removed as this duplicates the existing Inner West LEP 2022 clause 6.8 – Development in areas subject to aircraft noise.

This existing provision provides for adequate consideration of development impacted by aircraft noise to ensure that appropriate noise mitigation measures are implemented through the development application process.

Employment zone reforms

The proposed B4 Mixed Use zone has been translated as the new MU1 Mixed Use zone – see **Section 4.1.4 - Employment zone reforms** of the report for further discussion. This new zone applies to all former B4 Mixed Use zoned areas in the LGA. For this reason this new MU 1 zone is appropriate for this site as it continues to permit the same uses as that was intended under the B4 Mixed Use zone.

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.

4 Department's assessment

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

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement which were unresolved and required additional information or amendment in response to the Gateway determination.

The planning proposal submitted to the Department for finalisation:

- is consistent with the regional and district plans relating to the site;
- is consistent with the Council's Local Strategic Planning Statement.
- is consistent with all relevant Section 9.1 Directions.
- is consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage.

Table 2 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

	Consistent with Gateway determination report Assessment	
District Plan	<input checked="" type="checkbox"/> Yes – see Section 4.1.1 below	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes – see Section 4.1.2 below	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes – see Section 4.1.5 below	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes – see Section 4.1.6 below	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The Gateway assessment noted that consistency with the District Plan, Inner West Local Strategy Planning Statement, Section 9.1 Ministerial Directions and SEPP 65 remained unresolved subject to additional information and agency consultation.

The planning proposal's consistency with these unresolved matters are discussed below:

4.1.1 Eastern City District Plan

Planning Priority E18 – Delivering high quality open space

The Gateway assessment noted:

- the site is approximately 200m from Ryan Park to the west;
- Enmore Park is the closest large open space area located outside a 400m radius of the site (approximately 410m from the site);
- the proposed concept scheme proposes:
 - a publicly accessible plaza fronting Stanmore Road;
 - two publicly accessible and/or publicly owned through-site laneways;
 - additional communal open space proposed within the development which in the current concept scheme requires some of this space located on rooftops to achieve suitable solar access requirements.

The Gateway determination required further consideration of open space on the site. This includes considering opportunities to improve the quantum and amenity (solar access) of open space at ground level given the noise amenity impacts for roof top level communal open space and upper level private open space (balconies) resulting from aircraft and potential road traffic noise.

It is considered that the planning proposal has adequately addressed this matter – see **Section 4.1.6 - SEPP 65** and **Section 3.3 – Post exhibition changes** of this report for further discussions on open space.

4.1.2 Inner West Local Strategic Planning Statement (the LSPS)

The Gateway assessment noted that in part, the planning proposal gives effect to the LSPS, but included Gateway conditions to provide further information to justify consistency (**Table 6** below).

Table 6 Summary of LSPS Gateway conditions

LSPS Planning Priority	Additional information required
Priority 1 – Adapt to climate change	A landscape plan which demonstrates how the concept scheme will ensure deep soil areas are not impeded by above and below ground structures, and can accommodate existing and new tree canopy and plantings.
Priority 9 – A thriving local economy	Further clarification of how the proposed commercial and club floor space will be delivered in the B4 zone portion of the site.
Priorities 6 & 11 – Provide accessible facilities and spaces that support active, healthy communities	An amended concept scheme, that demonstrates the opportunities to maximise communal and publicly-accessible open space on the site, including how open space will remain ‘publicly accessible’ and will be usable for passive and/or active recreation

The planning proposal submitted for finalisation is consistent with the LSPS, because:

- it provides for housing supply and choice in the Inner West LGA;
- can achieve compliance with relevant built form, communal open space and deep soil area requirements in State Environmental Planning Policy No.65 and the associated Apartment Design Guide – see **Section 4.1.6 - SEPP 65** of this report for further discussion;
- provides for the local needs of the community by providing the MU1 – Mixed Use zone on the northern portion of the site;
- is 600m south east of Stanmore Station and 1km south west of Newtown Station; and
- is 200m west of Ryan Park and 410m north west of Enmore Park.

4.1.3 Inner West Local Housing Strategy (the LHS)

On 8 July 2021, the Department approved the Council's LHS.

The planning proposal gives effect the LHS, because:

- it provides housing choice, with both townhouses and mixed use residential flat building development proposed;
- it provides housing supply, facilitating approximately 120 dwellings. It is noted that the Department's approval of the LHS identified a housing shortfall in the 6-10 year timeframe (2021-2026);
- it provides housing near existing public transport (600m from Stanmore Station and 1km from Newtown Station); and
- it provides housing near services at Enmore and Newtown Centres.

4.1.4 Employment zone reforms

In December 2021, the reform of the employment zones was finalised with the introduction of five new employment zones and three supporting zones into the Standard Instrument (Local Environmental Plans) Order 2006. The Department is now implementing the employment zones with proposed amendments to individual LEPs across NSW.

The employment zones were introduced into 134 individual LEPs through 6 self-repealing SEPPs on 16 December 2022 and commenced on 26 April 2023.

The northern portion of the site will transition from the proposed B4 Mixed Use zone to the MU1 Mixed Use zone. This translation is consistent with Council's approach for its existing B4

zoned areas and does not impact the instrument, including the proposed additional permitted use provision.

4.1.5 Section 9.1 Ministerial Directions

2.3 Heritage Conservation

The Gateway assessment noted that the site adjoins the Kingston South Heritage Conservation Area (HCA) which contains local heritage items and the site is in close proximity to two local heritage items. Council provided additional information advising that no heritage items or buildings are located on the site.

This Direction remained unresolved because the planning proposal did not acknowledge this Direction and the Gateway was conditioned accordingly.

Prior to community consultation, the planning proposal was updated to include this additional information. Heritage NSW was consulted in accordance with the Gateway determination and provided no response.

The planning proposal is consistent with this Direction, because it does not impact the heritage significance of neighbouring heritage items or conservation areas.

2.6 Remediation of Contaminated Land

The Gateway assessment noted that:

- the planning proposal sought to amend the land use zones and permissible land uses, including use for residential purposes, and proposes to relocate an electricity substation;
- geotechnical investigations were undertaken and approved with a 2008 development application and confirmed that the site is suitable for residential use without remediation due to the history of uses;
- this investigation did not include the full extent of residential properties on Tupper Street and the electricity substation; and
- consistency with the Direction is unresolved until an updated preliminary site investigation which covers all properties. This was conditioned in the Gateway accordingly.

Prior to community consultation, the planning proposal was updated to include a preliminary site investigation, which:

- investigated the entire site, including the properties on Tupper Street and the electrical substation;
- concluded that the site can be made suitable for the proposed uses, subject to the following:
 - preparation of a detailed site investigation by a suitably qualified consultant;
 - a hazardous materials assessment is recommended to be completed prior to the demolition of the site;
 - any soil requiring removal from the site as part of future works should be classified in accordance with the 'Waste Classification Guidelines, Part 1: Classifying Waste' NSW EPA (2014); and
 - if during any works any contamination is uncovered, works should cease and the contamination investigated and disposed of in accordance with relevant regulatory requirements.

The planning proposal is consistent with Direction, because it has been updated in accordance with the relevant Gateway conditions, including a preliminary site investigation which:

- addresses the entire site; and
- has concluded that the site can be made suitable for the intended uses.

3.1 Residential zones

The Gateway assessment noted that:

- the planning proposal will facilitate medium and high-density residential development, located within a mixed use development and in a location that has sufficient access to existing infrastructure and services; and
- Part 4(d) of the Direction requires housing to be of good design. The proposal is subject to Gateway Conditions relating to design and amenity and this Direction is unresolved until those conditions are addressed.

The planning proposal is consistent with this Direction – see **Section 4.1.6 - SEPP 65** of this report for further discussion.

3.4 Integrating Land Use and Transport

The Gateway assessment noted that:

- the planning proposal provides increased residential density and new commercial uses in close proximity to public transport infrastructure. It also seeks to improve pedestrian and cycling links through the provision of new through-site connections; and
- a draft Traffic and Parking Impact Assessment was provided in support of the proposal, which concluded that the proposal would have negligible impact on the surrounding network.

A Gateway Condition required a new traffic impact assessment to be prepared and consultation with Transport for NSW.

The planning proposal is consistent with this Direction, noting that TfNSW has raised no objection – see **Section 3.2 Advice from Agencies** of this report for further discussion.

3.5 Development Near Regulated Airports

The Gateway assessment noted that:

- the Direction applies as the planning proposal seeks to change the zones and provisions relating to land near a core regulated airport, including an increase to the maximum height limit and residential density;
- the site is located predominantly in the ANEF 20-25 contours with a portion (1,800m² or 20%) of the site in ANEF 25-30; and
- an Obstacle Limitation Surface (OLS) of 51 AHD applies to the site;

The Gateway assessment concluded:

- ANEF Contours - the potential for the inconsistency with Part 5(c) to be of minor significance, but required because:
 - an updated Aircraft Noise Planning Strategy demonstrating how aircraft noise will be specifically managed for the site to achieve the relevant ANR and internal design levels of AS2021; and
 - demonstration that an improved, usable ground level communal open space outcome can be accommodated to minimise locating such areas at the roof top level where there is greater exposure to aircraft noise and to compensate for impacts on upper level private open space (balconies).

- Obstacle Limitation Surface – Gateway Conditions and Agency consultation with CASA, Sydney Airport, Air Services and the Department of ITRDC are required accordingly.

The planning proposal was updated prior to community consultation to include a revised noise strategy and urban design analysis which addressed the relevant Gateway conditions.

The planning proposal is consistent with this Direction, because:

- prior to community consultation, an updated noise assessment was provided which included detail recommendations for future residential and commercial development of the site which if implemented will ensure:
 - Marrickville Development Control Plan (DCP) 2011;
 - State Environmental Planning Policy Infrastructure 2007 (now State Environmental Planning Policy (Transport and Infrastructure) 2021);
 - Developments near Rail Corridors or Busy Roads – Interim Guideline; and
 - Australian Standard AS2107:2016 – ‘*Recommended Design Sound Levels and Reverberation Times for Building Interiors*’; and
 - Australian Standard AS2021:2015 - ‘*Acoustics – Aircraft noise intrusion–Building siting and construction*’.

These detailed design recommendations are capable of being implemented during the development application process; and

- no objection to the planning proposal has been raised by:
 - Sydney Airport Corporation;
 - Air Services Australia;
 - the Federal Department of ITRDC; and
 - Civil Aviation Safety Authority.
- approximately 2,215m² of communal open space at ground levels – see **Section 4.1.6 - SEPP 65** of this report for further discussion.

6.3 Site Specific Provisions

The planning proposal seeks to rezone part of the land to B4 (now MU1 Mixed Use) and permit residential flat buildings (RFB) as part of a mixed use development on this portion of the site.

The Gateway assessment noted that the proposed amendment does not require the mixture of uses to include a ‘club’, as per Objectives 2 and 4 of the proposal. Therefore, further clarity was required as to whether the planning proposal is seeking to ensure a particular development outcome in the LEP to ensure a ‘club’ use is mandated on the site. The Gateway was conditioned accordingly.

Prior to community consultation, the planning proposal was updated to clarify that development for the purpose of a residential flat building is permitted with consent, but only when developed as part of a mixed-use development that includes a minimum 1,500m² GFA for Registered Club and Commercial Premises purposes.

The planning proposal is consistent with this Direction because:

- it clarifies that a minimum gross floor area for Registered Club and Commercial Premises is to be provided on site.
- this addresses the relevant Gateway conditions; and
- the mechanism for allowing residential flat buildings aligns with the permissibility of the B4 Mixed Use zone.

Council made a post-exhibition change to the minimum gross floor area requirement – see **Section 3.3.1 Council's post exhibition changes** of this report for further discussion.

4.1.6 SEPP 65

The Gateway assessment noted that the planning proposal and supporting development concept scheme needed to be updated to:

- address the delivery of improved and usable ground level communal open space which achieves the requirements of the Apartment Design Guide (ADG) and minimises exposure to aircraft noise by being located away from rooftops;
- demonstrate an improved residential amenity outcome by achieving compliance with the ADG solar access requirements for all individual buildings on the site and demonstrate that the adjoining properties will achieve compliance with the ADG requirements in terms of solar access;
- include a landscape plan which demonstrates how the provision of deep soil planting will not be impeded by above ground structures or subterranean development and which is capable of accommodating the trees which will be retained and new replacement planting. The landscape concept plan must demonstrate how new trees will be accommodated and the community benefits stated in Council's Additional Information Response (dated 8 March 2021) of tree lined streets, lanes and vistas are achieved; and
- provide a clear rationale for the reduced height and FSR standards that are being proposed, having regard to the existing scale of surrounding buildings and the desired future character, which includes heritage items and a heritage conservation area. This is to include:
 - a rationale demonstrating how the amended height and density provisions, and built form of the concept plan are sympathetic to, and consistent with, the surrounding area's density, scale and context;
 - be informed by a heritage study prepared by a suitably qualified expert; and
 - include photomontages and view analysis of all buildings providing a clear visual representation of the intended bulk and scale and relationship to the surrounding area.

Prior to community consultation, the planning proposal was updated to provide an rationalized urban design package that sought to address the relevant Gateway conditions. A comparison of the proposal at Gateway with the planning proposal submitted by Council for finalisation is below (**Table 7**).

Table 7: Comparison of Gateway and Exhibited (and finalisation) concept schemes

Matter	Concept submitted for Gateway	Concept exhibited (and submitted for finalisation)
Dwellings	160	Up to 120 dwellings (includes townhouses)

Matter	Concept submitted for Gateway	Concept exhibited (and submitted for finalisation)
Building Height (storeys)	SITE A - 21 m (5 storeys) SITE B – <ul style="list-style-type: none"> West side 20m (5 Storeys); and East side 23m (6 Storeys). SITE C - 11 m (3 Storeys) (current zoning permits 14 m)	SITE A - 21 m (5 Storeys – upper two levels setback from Alma Ave.) SITE B – <ul style="list-style-type: none"> West side 17m (4 Storeys – with level 4 setback from Alma Ave.); and East side 21m (6 Storeys – with levels 5 and 6 setback from Tupper Street. SITE C - 11 m (3 Storeys) (current zoning permits 14 m)
Non-residential uses	<ul style="list-style-type: none"> approx. 12,619 to 12,769sqm for residential; 1000sq.m of club building over 2 levels; and 350-500sq.m of commercial space at ground level facing Stanmore Road. 	<ul style="list-style-type: none"> approx. 11,063 to 11,663sq.m for residential; approx. 1,600 – 2000sq.m of club building over 2 levels; and approx. 500-700sq.m of commercial/retail space at ground level facing Stanmore Road.
Communal Open Space (COS)	approx. 2,000sq.m of communal open space at ground and roof levels. Significant COS on roof.	approx. 2,2,142sq.m of communal open space at ground levels, as per ADG guidelines. Roof level COS removed.

The planning proposal is consistent with SEPP 65 as discussed below.

Overshadowing

The ADG includes requirements that:

- living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area; and
- a maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter

The planning proposal demonstrates compliance can be achieved with (**Figure 7** and pp 88 and 93 of the Urban Design Report dated March 2022):

- a minimum 3hrs of solar access is retained to surrounding residential development at winter solstice, including 22 Tupper Street to the immediate south of the site;
- a minimum 2hrs of access is provided to approximately 75% of the proposed residential dwellings on the site at winter solstice; and
- approximately 4% of proposed residential dwellings receive no direct solar access at winter solstice.

Further refinement of solar access to existing and proposed residential dwellings can occur during the development application process.

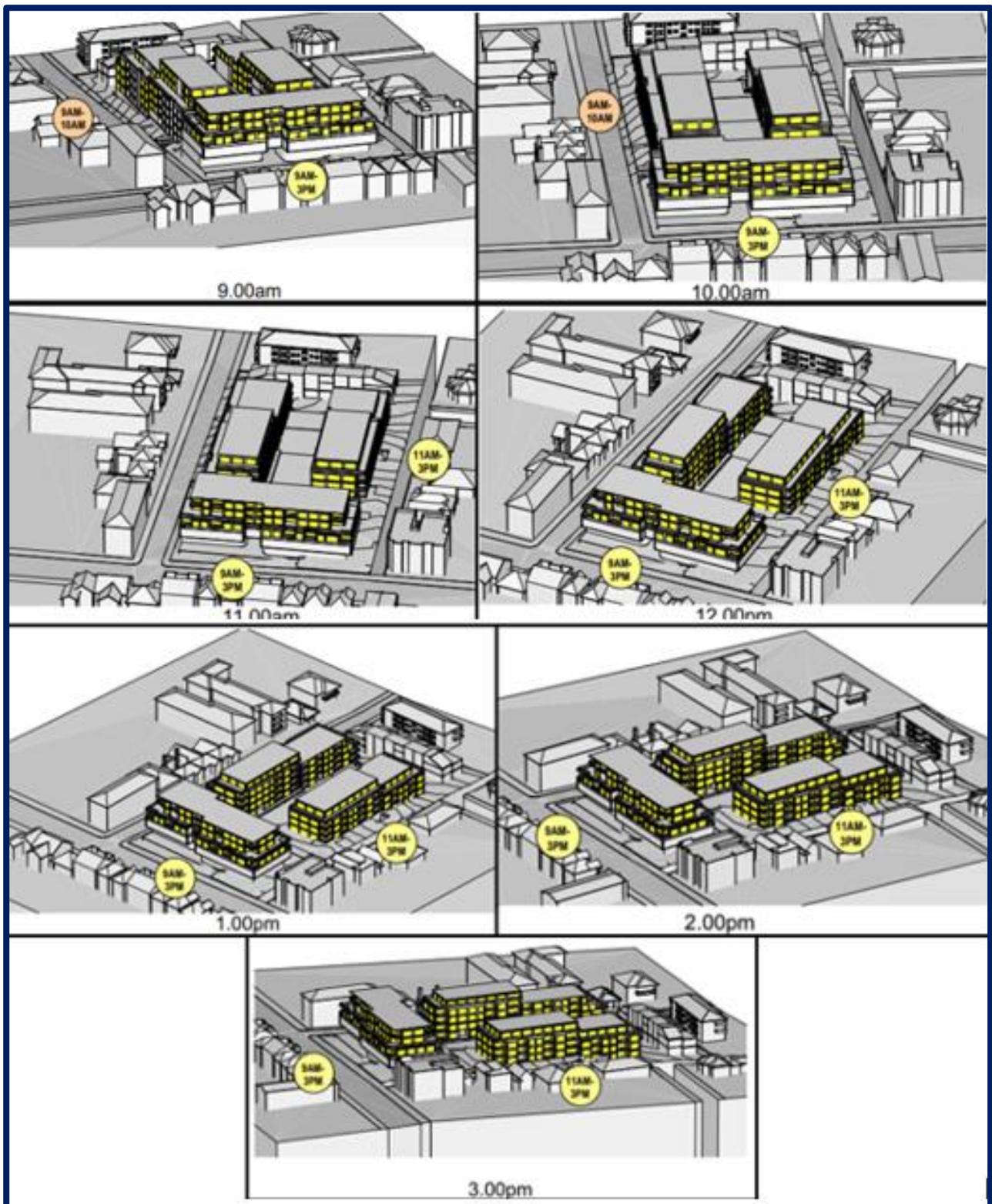


Figure 7 – Solar access sun-eye diagram (Source: the planning proposal)

Built form and Scale

The ADG seeks to provide for adequate built form outcomes with requirements which include:

- consideration of local character and context;
- minimum separation distances between:
 - 6m to 12m for buildings up to four storeys (approx. 12 metres); and
 - 9m to 18m for buildings of five to eight storeys (approx. 25 metres).
- building depths that can support a range of apartment layouts;
- maximum apartment depths of 12-18m; and
- at least 60% of apartments are naturally cross ventilated (maximum 6 storeys proposed).

The proposal demonstrates:

- appropriate scale and built form in the context of existing development, including surrounding 3 and 4 storey residential development (**Figure 8**);
- building depths ranging from approximately 15m to 19m can support a range of apartment layouts (**Figure 9**), including maximum apartment depths;
- the proposed built form can achieve appropriate building separation and setback requirements (**Figure 9**); and
- 67% (71 of 106) of apartments are naturally cross ventilated (maximum 6 storeys proposed).

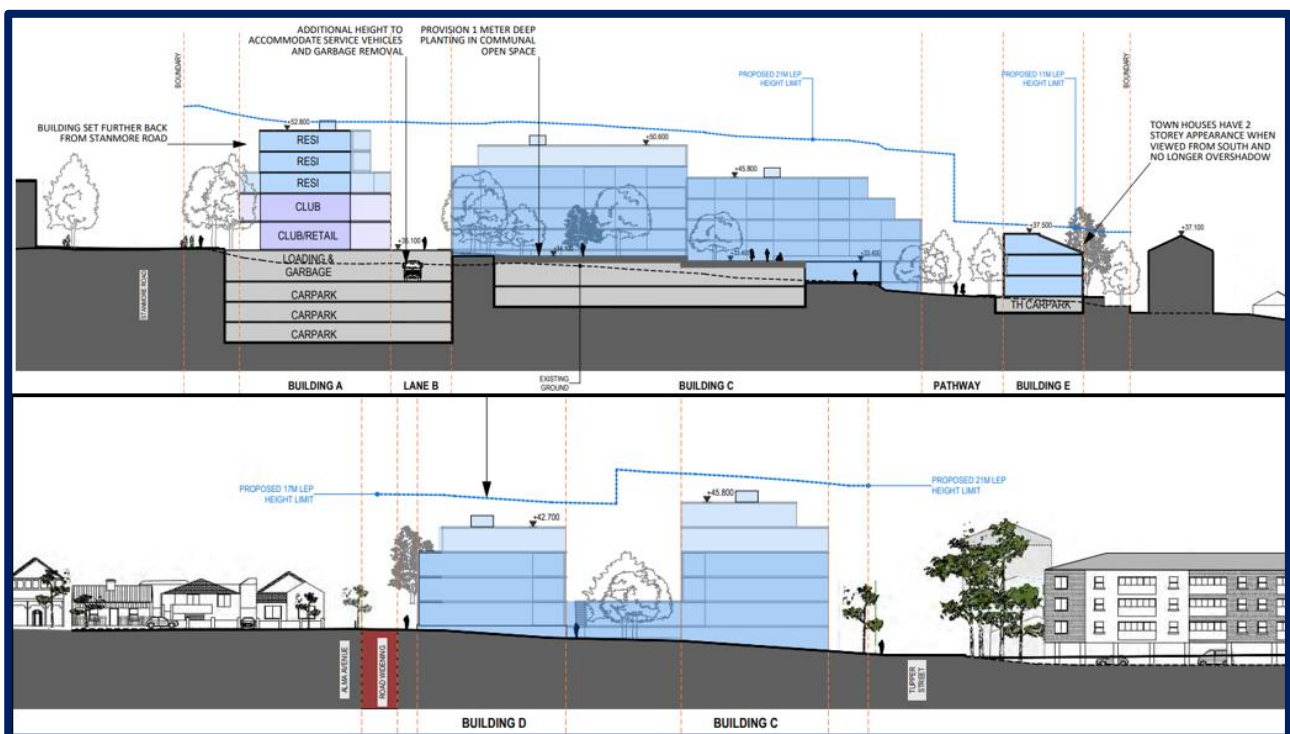


Figure 8 – Bulk and scale diagrams in context of existing development in surrounding area (Source: the planning proposal)

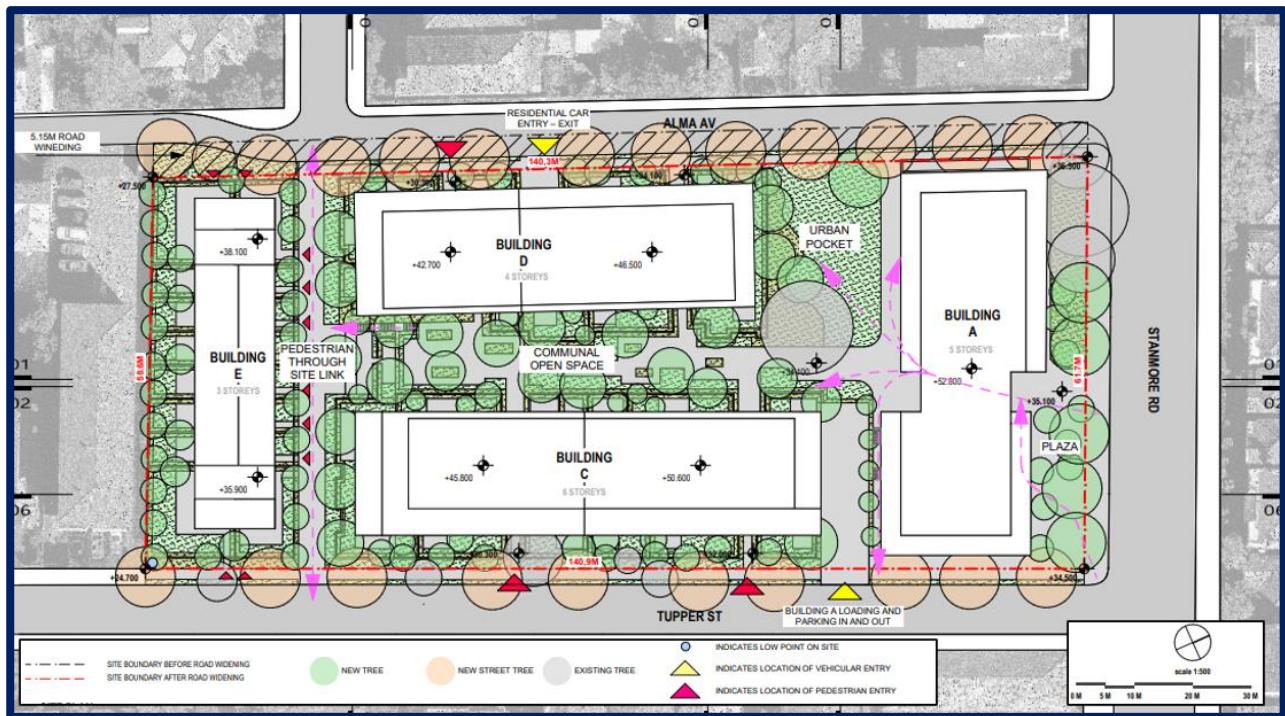


Figure 9 – Scaled site layout plan (Source: the planning proposal)

Communal Open Space

The ADG includes requirements that communal open space:

- has a minimum area equal to 25% of the site;
- achieves a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter);
- a minimum dimension of 3m, and larger developments should consider greater dimensions; and
- areas may be supplemented by:
 - additional landscape area, circulation space and areas for passive use and outlook;
 - public land used for open space and vested in or under the control of a public authority.

The planning proposal demonstrates compliance can be achieved with (**Figure 10**):

- approximately 2,142m² of the site nominated for communal open spaces at ground level. This is approximately 1.5% short of the ADG requirement but can be resolved through the development application process.

It is noted that some of these areas are identified as areas with public access – this is satisfactory as the ADG recognises that communal open space can be accessible and usable by the general public;

- at least 50% of the identified communal open spaces can achieve a minimum 2hrs of solar access at mid-winter;
- the communal open space areas having a minimum 3m dimension; and
- the communal open spaces are shown at ground level.

Further refinement of communal open space areas can occur during the development application process.

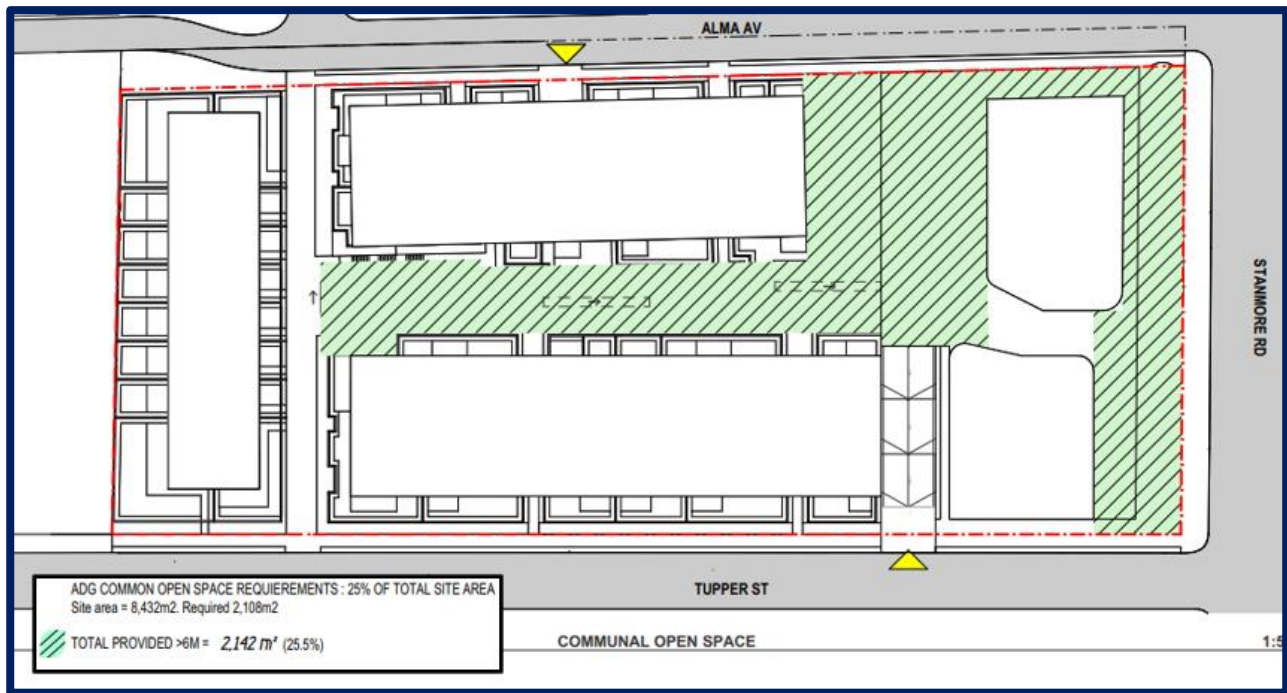


Figure 10 – Proposed communal open spaces (Source: the planning proposal)

Deep Spoil and Landscaping

The ADG includes requirements that deep soil areas:

- for sites greater than 1,500m² cover 7% of the site area with a minimum 6m dimension;
- be co-located with communal open spaces; and
- be located to retain existing significant trees.

The planning proposal demonstrates compliance can be achieved with (**Figure 11**):

- approximately 1,306m² (15.5% of the site area) of the site being deep soil with a minimum 6m dimension;
- is co located with communal open spaces areas; and
- is co-located with existing significant trees.

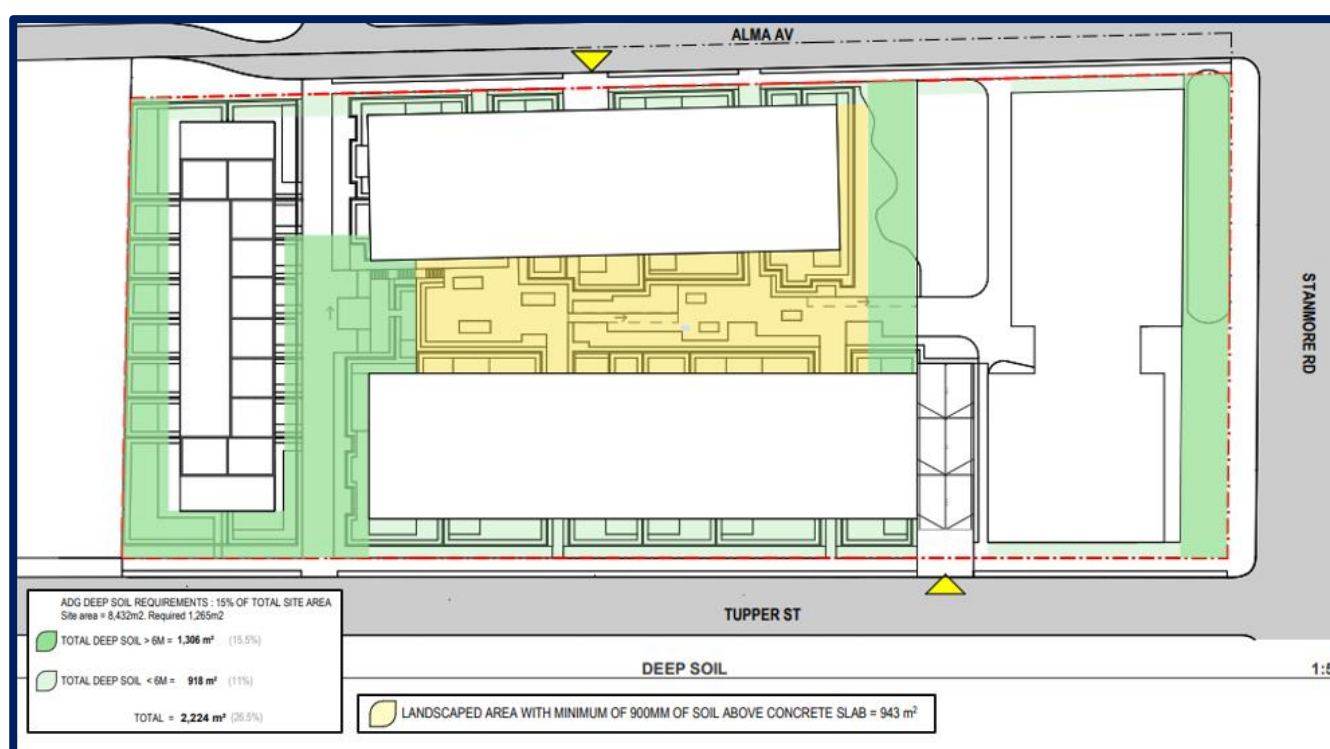


Figure 11 – Proposed deep soil areas (Source: the planning proposal)

5 Post-assessment consultation

The Department 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	Five maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the Act.</p> <p>Council confirmed on 11 January and 3 May 2023 that it did not object to the draft, but the plan should be made with its post-exhibition changes – see Section 3.3.2 – the Department's Post-Exhibition Changes of this report for further discussion.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 12 April 2023, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <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 LEP has strategic and site specific merit being consistent with the strategic planning framework under the Act, including Council's Local Strategic Planning Statement;
- it is consistent with the Gateway Determination; and
- issues raised during consultation have been addressed, and there are no outstanding agency objections.



Dated 3 May 2023

Alexander Galea

Manager, Metro East and South

8289 6793



Dated 3 May 2023

Katie Joyner

Director, Metro East and City of Sydney

Assessment officer

Sarah Waterworth

Senior Planning Officer, Metro East and City of Sydney