

IRF21/2426

Gateway determination report – PP-2021-3958

9 Palaran Avenue, North Kellyville (7 dwellings)

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans

Attachment A – Planning Proposal

Attachment B - Council Report & Resolution 23 March 2021

Attachment C – Council letter requesting Gateway

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	The Hills Shire Local Government Area
PPA	The Hills Shire Council
NAME	Rezone part lot 3 DP 249675 from E4 Environmental Living to R2 Low Density Residential (7 homes, 0 jobs)
NUMBER	PP-2021-3958
SEPP TO BE AMENDED	State Environmental Planning Policy (Sydney Region Growth Centres) 2006
ADDRESS	9 Palaran Avenue, North Kellyville 2155
DESCRIPTION	Part Lot 3 DP 249675
RECEIVED	17/06/2021
FILE NO.	IRF21/2426
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The objectives of the planning proposal (Attachment A) are:

- to facilitate the orderly development of part Lot 3 DP 249675 which is isolated due to surrounding E4 Environmental lands being developed and unsuccessful attempts to amalgamate; and
- to facilitate up to 7 (seven) low density residential lots in a layout consistent with the surrounding streetscape being other developments within the E4 Environmental Living zone.

The planning proposal contains objectives that adequately explain the intent of the proposal.

The LEP amendments only apply to part of Lot 3 however the planning proposal also describes the development concept for the entire Lot 3, being the creation of twenty-one (21) residential lots. The planning proposal is to be updated to clarify the LEP amendment will only deliver 7 (seven) dwellings on the land subject to the amendment.

1.3 Explanation of provisions

To enable the intended outcome, the application seeks to amend the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP) by rezoning part of Lot 3, reducing the minimum lot size and inserting a local provision as shown in Table 3. Table 3 includes current and proposed controls for the entire Lot 3. Figure 1 is an excerpt of the subdivision concept plan supporting the planning proposal.

Table 3 Current and proposed controls

Control	Current	Proposed by Council	Department comment
Zone	Part R2 Low Density Residential	R2 Low Density Residential	N/A
	Part E4 Environmental Living		
Maximum height of the building	9m	No change	N/A
Minimum lot size	4,000m² for land zoned E4, or 600m² where the land is subdivided in accordance with the Community Land Development Act 1989 for a neighbourhood scheme.	600m ² for land zoned E4	Consideration should be given to using the minimum lot size of 650m² for land zoned E4 to achieve other design outcomes (discussed below)
	Note: SEPP does not map minimum lot sizes for R2 Low Density Residential land		
Local Provision	Nil	Maximum of 7 dwellings for part Lot 3, see below.	Consideration should be given to increasing the minimum lot size and removing the local provision (discussed below).

Council's preference is that all lots have a street address, which is a key characteristic of the local area and a good design outcome. Achieving this would result in the creation of 7 lots in the area to be rezoned, as opposed to the 8 lots initially proposed by the proponent.

Figure 1 is Council's mark-up of the proponent's concept subdivision plan demonstrating how a 7 lot concept could be achieved on the subject land. A revised concept plan will be required to support the Planning Proposal demonstrating a 7 lot subdivision. This has been conditioned as part of the Gateway.



Figure 1 Council mark-up of proposed subdivision concept plan

Council has proposed a local provision as follows:

6.7 Development at 9 Palaran Avenue, North Kellyville

- (1) This clause applies to land subject to a minimum lot size of 600m² at 9 Palaran Avenue, North Kellyville, being Lot 3, DP 249675.
- (2) Development consent must not be granted to development that results in more than 7 dwellings on the subject land.

Department comment

The intent to ensure that all lots address the street and to discourage battle-axe lots is supported. This approach is consistent with Council's North Kellyville DCP which limits battle-axe lots to certain circumstances being land that interfaces with public open space, land that fronts access denied streets and to resolve residual land issues.

Council's proposed dwelling cap is one way to achieve this outcome but may have the unintended consequence of also limiting the number of, and types of housing on these lots that would otherwise be permissible under the R2 Low Density Residential Zone. Also, the early development of one lot for a dual occupancy development would mean that all lots would not have entitlement o a dwelling.

Other options for ensuring the desired streetscape outcomes include:

• Increasing the minimum lot size to 650m² - The minimum lot size of 600m² has been selected as it is consistent with provisions in the SEPP (Sydney Region Growth Centres) for development on E4 Environmental Living land in certain circumstances (community title development). The same development outcome of 7 (seven) lots, fronting the street can be achieved by increasing the minimum lot size to 650m². This would remove the requirement for a local provision to be inserted into the SEPP and the amendment of an additional supporting SEPP map (discussed further below).

Increasing the minimum lot size by 50m² would result in a minor increase only in width to the northern lots for example, proposed lot 1 being the widest lot would increase in width by 1.66m, from 19.035m to 20.7m. This is not seen as unnecessarily wide given the minor increase. Increasing the lot size by 50m² would have negligible impact on the northern lot. Lot widths as wide as approximately 21m would be consistent with the streetscape, lots

approximately this width and wider can be seen along Roland Garros Crescent (both to the north and south of the subject land), Riverside Way.

If this approach is supported by Council, this would become a map only amendment. The plan making process will become more efficient while creating the same development outcome.

- Introducing / reinforcing a minimum lot width control in the DCP.
- **Proceeding with a dwelling / lot cap.** If Council wishes to proceed with the local provision, it is to be amended as follows:
 - Wording to refer to <u>part</u> Lot 3 DP 249675. Currently it reads as if it applies to the entire Lot 3 which is not the intent of the provision. As outlined in the proposal, Lot 3 can be developed for approximately 21 residential lots.
 - As the provision will apply to a part lot, this area will need to be shown on a supporting SEPP map such as the Key Sites Map.
 - Council is to review whether it intends for the cap to refer to dwellings or on the number of lots. It appears Council refers to lots however a range of dwelling types are permissible within the R2 Low Density Residential land use zone thus more than one dwelling could be achieved on each lot. Having a cap apply to the number of dwellings will be problematic if individual landowners seek to develop a lot with more than one dwelling.
 - Council is to consider whether this provision should be referred to in clause 4.6(8) of the Appendix 2 Precinct Plan to ensure the standards under that provision are not amenable to variation under clause 4.6.

The above considerations have been conditioned as part of the Gateway.

1.4 Site description and surrounding area

The subject site is part of Lot 3 DP 249675, at 9 Palaran Avenue, North Kellyville. The site is identified in **Figure 2**, with the area subject to the amendment outlined in dotted red. The entire site is generally flat, with an area of approximately two hectares. The land subject to the amendment is 4,960m², contains scattered vegetation with some structures.

The site is accessible by Palaran Avenue but has frontage to Roland Garros Crescent and Barabati Road as shown in (**Figure 2**). This is consistent with the North Kellyville Indicative Layout Plan road network (**Figure 3**). To the north and east, similar subdivisions to the one proposed have recently been registered. Land on the western border is yet undeveloped.



Figure 2 Subject site (Source: SIX maps)



Figure 3 Extract from the North Kellyville Precinct Draft Indicative Layout Plan

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Land Zoning and Minimum Lot Size maps, which are suitable for community consultation. The Department notes that in addition, if Council proceed with a local provision, an amendment will be required to the Key Sites Map to identify the land subject to this amendment.

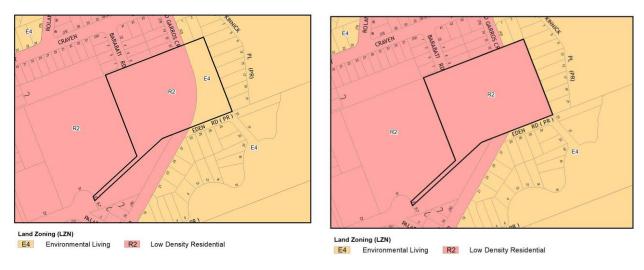


Figure 4 Current land use zoning (left) and proposed land use zoning (right) maps



Figure 5 Current minimum lot size (left) and proposed minimum lot size (right) maps

2 Need for the planning proposal

The planning proposal is not the result of any strategic study. Subject to Council considering the Department's comments provided under Section 1.3 of this report regarding mechanisms to achieve the intended development outcomes for the site, the planning proposal is the best means of achieving the proposal objectives.

3 Strategic assessment

3.1 District Plan

The Central City District Plan is the applicable plan for The Hills Shire. It responds to the vision and actions of A Metropolis of Three Cities – A Greater Sydney Region Plan released by the Greater Sydney Commission in March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the planning priorities as outlined in Table 4 below. The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

Table 4 District Plan assessment

District Plan Priority	Justification
Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport	The rezoning will support the ability for the subject land to contribute to housing supply as envisaged under the precinct plan. The site is within 500m of bus stops, providing access to services and jobs.
Planning Priority N15 – Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes	The land subject to this amendment contains scattered vegetation. As described in Section 4.1, the site is biodiversity certified. The loss of vegetation on this land has already been considered and addressed through that process. Due to surrounding development, the E4 zoned land parcel is isolated from the creek corridor and no longer serves a function in contributing to the planned scenic and cultural landscape of the nearby vegetation corridor. It is considered therefore that rezoning this land is not inconsistent with this priority.

3.2 Local

The proposal states that it is consistent with Council's **Local Strategic Planning Statement**: Hills Future 2036, as shown below in **Table 5**:

Table 5 LSPS assessment

LSPS Planning Priority	Justification	
Planning Priority 7 – Plan for new housing in the right locations	The site is within the North Kellyville Release Area, planned to provide 6,500 additional dwellings by 2036. The proposal is consistent with existing local character and adjoining subdivisions and is supported by existing bus transport, accessible within 500m walk of the site.	
Planning Priority 17– Protect areas of high environmental values and significance	Due to surrounding development, the land parcel currently zoned E4 is isolated from the creek corridor and disassociated from its original environmental intent. As mentioned above, the site is biodiversity certified and therefore not considered to have high environmental values or significance. It is considered that rezoning this land is not inconsistent with this priority.	

The proposal also states that it is consistent with The Hills Future Community Strategic Plan

The Hills Future Community Strategic Direction articulates the shared vision, values, aspirations and priorities of The Hills Shire community and Council. It creates a picture of where The Hills would like to be in the future. The direction is based on community aspirations gathered throughout months of community engagement.

The planning proposal will facilitate the delivery of 7 residential lots consistent with the existing local character and adjoining subdivision layouts. It will be supported by existing public transport infrastructure.

3.3 Local planning panel

Under the Ministerial *Local Planning Panels Direction – Planning Proposal (2018),* planning proposals are required to be referred to the Local Planning Panel for advice.

The planning proposal was forwarded to the Local Planning Panel (LPP) for advice on 21 February 2021. On 22 April 2021 the LPP voted unanimously that the planning proposal be forwarded to the Department for Gateway determination, subject to two amendments. These were – inclusion of a maximum cap of 7 dwellings on the E4 zoned land portion, and provision of a Bushfire Assessment Report prior to Council's consideration of the planning proposal.

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below.

Direction 2.1 – Environment Protection Zones

Under this Direction, a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas, and must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).

It is considered that the planning proposal would not reduce the relevant environmental protections applying to the land by way of the proposed rezoning for the following reasons:

- The land was Biodiversity Certified at the time of rezoning the North Kellyville Precinct and the certification allows for land clearing for residential development without further environmental assessment. The vegetation on the subject site can be described as 'scattered' and is not identified as significant vegetation in the relevant LEP maps.
- The proposed scale of development achievable under the planning proposal is consistent with what have could have been achieved under the E4 Zone for the land, and has been achieved on adjoining land zoned E4 (600m² lots), if the subject site had have been amalgamated and developed as part of the adjoining sites, as intended. Because it is now an 'orphaned' parcel of land, the community title requirements and precinct scale density controls have the unintended consequence of limiting development potential on these sites, compared to adjoining lots.

The proposed minimum lot size control of at least 600m² will generally ensure the same dwelling density as permissible under the current controls and will allow for some of the scattered vegetation to be retained in private ownership.

The planning proposal is consistent with this Direction.

Direction 2.6 - Remediation of Contaminated Land

This direction applies when a planning proposal authority prepares a planning proposal applying to land which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital:

- (a) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning quidelines has been carried out, and
- (b) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

The planning proposal is not supported by a contamination report, however the proposal states that as the site already contains an occupied residential dwelling, it is considered that the planning proposal is consistent with this Direction.

However, the Department is of the view for the proposal to demonstrate consistency with this Direction and considering no contamination report has been submitted, the planning proposal authority would have needed to consider a report demonstrating whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out.

As this Direction requires the planning proposal authority to consider this Direction when preparing a planning proposal, the proposal will remain inconsistent. The Department is of the view that it is or minor significance and justifiable, considering the site is currently used for residential purposes. However, it is recommended a contamination report is prepared and the planning proposal updated prior to exhibition. This has been included in the Gateway conditions.

Direction 3.1 Residential Zones

This Direction seeks to encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of infrastructure and minimise the impact of residential development on the environment and resource lands.

This Direction is applicable as the proposal is introducing a residential zone to the land subject to the LEP amendment. The planning proposal will facilitate a development outcome consistent with the lot size, the character of local and immediate surrounding residential developments and would make efficient use of existing public transport infrastructure.

This Direction requires that a planning proposal must not contain provisions which will reduce the permissible residential density of the land. The Department notes that while the planning proposal will increase the permissible density of the land, it includes a local provision to cap the number of dwellings which is contrary to the Direction. However, as the intended outcome of the dwelling cap is to maintain the existing streetscape, and the dwelling cap would only reduce the development potential by 1 (one) dwelling, this inconsistency is considered minor and justifiable.

However, the Department has provided comments on an alternative mechanism for Council to achieve the proposal's intended outcomes under Section 1.3 of this Report. Following Council's consideration, the planning proposal is to be updated to address (5)(b) of the Direction which states a planning proposal must not contain provisions which will reduce the permissible residential density of land prior to public exhibition. This has been conditioned as part of the Gateway.

Direction 3.4 - Integrated Land Use and Transport

This Direction seeks to ensure that proposals achieve planning objectives relating to improving access to housing, jobs and services by walking, cycling and public transport, increasing the choice of available transport, reducing travel demand and supporting efficient operation of public transport.

This Direction applies as the proposal seeks to amend provisions relating to urban land, specifically land permitting residential development. The planning proposal is consistent with this Direction as it will provide dwellings with access to public transport, which provides access to services and jobs. Access to bus route 715 is within 400m of the site and access to bus route 601 is within 1km of the site.

Direction 4.4 – Planning for Bushfire Protection

The objectives of this Direction include protecting life, property and the environment from bush fire hazards by discouraging the establishment of incompatible land uses in bush fire prone areas and encouraging sound management of bush fire prone areas. The Direction also states that a planning proposal must have regard to *Planning for Bushfire Protection 2019*.

The planning proposal is supported by a bushfire report as the site is identified as containing bushfire prone land (Vegetation Buffer and Vegetation Category 2). A Strategic Bush Fire Study has been undertaken and concluded 'the proposal is appropriate in the bushfire hazard context'. In addition, an assessment of the proposal against Planning for Bush Fire Protection 2019 has

concluded that any future Development Application has the capacity to comply with the relevant specifications of set out in this document.

As part of the Gateway Determination, formal consultation with NSW Rural Fire Service to ensure the proposal complies with the specific requirements of this Direction will be required. Until this occurs the consistency of this proposal with the Direction will remain unresolved.

Direction 6.3 Site Specific Provision

The objective of this Direction is to discourage unnecessarily restrictive site specific planning controls. The Department has provided comment under Section 1.3 of this Report of an alternative mechanism to achieve the intended outcome of the proposal without utilising a local provision.

Following Council's consideration of the Department's comments, Council is to update the planning proposal to address this Direction which is conditioned as part of the Gateway. If Council wish to proceed with the local provision, the planning proposal would be inconsistent with this Direction. However, as the proposed site specific provision will reduce the development potential by 1 (one) lot/dwelling, the inconsistency is considered to be of minor significance.

Direction 7.4 – Implementation of North West Growth Area Land Use and Infrastructure Implementation Plan (LUIIP)

The objective of this Direction is to ensure development within the North West Priority Growth Area is consistent with the LUIIP.

The planning proposal is consistent with the LUIIP as it will assist Council's ability to deliver appropriate infrastructure to service the future residential population of North Kellyville.

3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in **Table 6** below.

Table 6 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
State Environmental Planning Policy No.19 – Bushfire in Urban Areas	The aim of this SEPP is to protect and preserve bushland within urban areas.	Consistent	The planning proposal will facilitate a development that will result in the site being cleared of vegetation. The subject site is not considered environmentally sensitive given it is not identified as containing native vegetation in the Native Vegetation Protection Map and is not located within the Riparian Protection Area Map under the Growth Centre's SEPP. The site is biodiversity certified and land clearing is able to occur over the site in accordance with the legislation.

State Environmental Planning Policy (Sydney Region Growth Centres)2006	The aims of this SEPP are to release land for urban development and support it with appropriate development controls	Consistent	The proposal supports the SEPP and does not contain provisions that would challenge or obstruct the application and objectives of the SEPP.
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4 Site-specific assessment

4.1 Environmental

Table 7 below provides an assessment of the potential environmental impacts associated with the proposal.

Table 7 Environmental impact assessment

Environmental Impact	Assessment
Biodiversity	Due to the proposal increasing the dwelling density on the site, the proposed rezoning will impact the site's vegetation. However, the SEPP (Sydney Region Growth Centres) 2006 does not identify the subject site as containing either existing native vegetation or native vegetation retention area. It is therefore not considered to have high environmental values or significance. In addition, the site is biodiversity certified (Figure 6).
	Due to the site being within the North West Growth Area and its biodiversity certification status, the Gateway will be conditioned for the proposal to be referred to the Environment, Energy and Science Group.
Bushfire Prone Land	The site contains bushfire prone land as discussed under Section 3.4 of this report. The proposal will not negatively impact the site's bushfire risk.
Stormwater and Flooding	A Stormwater and Flood study has not been provided to support the planning proposal, and Council does not currently have flood mapping available for the site.
	Considering this proposal will only generate a small number of dwellings, stormwater and/or flood
	It is assumed that after development the site will generate enough stormwater runoff to require a site-specific flood study in support of any development application. The study would need to include details of on-site stormwater quality treatment and retention and a water sensitive urban design strategy.

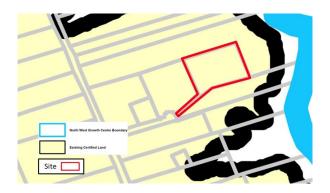


Figure 6 Biodiversity certified land (Source: Planning Proposal Sutherland & Associates Planning, December 2020)

4.2 Social, Economic and Infrastructure

Table 8 below provides an assessment of the potential social, economic and infrastructure impacts associated with the proposal.

Table 8 Social, economic and infrastructure impact assessment

Impact	Assessment
Social Impact	There are no negative social impacts associated with the proposal.
Economic Impact	There are no negative economic impacts associated with the proposal.
Infrastructure	Future development of the site would need to be supported by the necessary services including electricity, telecommunication, gas, water, sewer and stormwater management. Consultation is recommended with service providers to ensure services have been adequately accounted for.
	A traffic study has not been provided in support of the proposal. Council considers that it would be unlikely for the additional yield of approximately 7 dwellings to substantially increase traffic volume on local and regional road infrastructure from what has been anticipated within the <i>North Kellyville Traffic and Transport Assessment 2008</i> , (prepared by Maunsell Australia).
	It is noted the planning proposal states the proposal will facilitate the delivery of the missing local road links between Barabati Road and Roland Garros Crescent, in accordance with the North Kellyville DCP. However, these road connections would have been delivered as part of the development of Lot 3 regardless of this planning proposal proceeding.

5 Consultation

5.1 Community

Public exhibition of the planning proposal is appropriate and should be made available for community consultation for a minimum of 28 days. This will form a condition of the Gateway determination.

5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- Environment, Energy and Science Group,
- NSW Rural Fire Service,
- · Sydney Water,
- Endeavour Energy,
- · Telstra; and
- NBN Co.

6 Timeframe

The Department recommends a time frame of 9 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

7 Local plan-making authority

The Department recommends that Council be authorised to be the local plan-making authority for this proposal considering the local nature of this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- Given the manner in which the surrounding land has been developed, and that the subject site has not been amalgamated and developed as intended, the current controls no longer reflect the intent for the land. The proposed zoning and minimum lot size proposed will result in development consistent with adjoining lots and the prevailing neighbourhood character.
- The proposal would encourage orderly development of part Lot 3, maintaining streetscape outcomes set by within the E4 Environmental Living land use zone.
- Council is to consider the Department's comments regarding an alternative mechanism to achieve the same intended outcome of the proposal.

9 Recommendation

It is recommended the delegate of the Secretary:

- Consider that the inconsistencies with section 9.1, 2.6 Remediation of Contaminated Land, 3.1 – Residential Zones and 6.3 – Site Specific provision be considered minor and justifiable in this instance.
- Note that the inconsistencies with section 9.1 Direction 4.4 Planning for Bushfire
 Protection are unresolved and will require further justification in accordance with the terms
 of the Direction.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

2. Prior to public exhibition the planning proposal is to be updated to:

- Clarify under Part 1 Objectives or intended outcomes that the planning proposal is intended to facilitate only 7 (seven) lots/dwellings on the land subject to the amendment.
- Include a subdivision concept layout demonstrating how 7 (seven) lots can be achieved on the subject site.
- Council is to consider the Department's comments under Section 1.3 of the Gateway Assessment Report and amend the planning proposal as required to justify the proposed approach.
- If Council is to proceed with a local provision, amend the wording of the local provision to only refer to <u>part</u> Lot 3 DP 249675 and amend the Key Sites Map supporting the SEPP(Sydney Region Growth Centres) to identify the land subject to this amendment.
- A contamination report is to be prepared to support the planning proposal. Direction 2.6 Remediation of Contamination Land is to be updated accordingly.
- Following consideration of Section 1.3 of the Gateway Assessment Report, update Direction 3.1 Residential Zones to address 5(b) of the Direction and address Direction 6.3.
- 3. The planning proposal should be made available for community consultation for a minimum of 28 days.
- 4. Consultation is required with the following public authorities and address any comments of these agencies:
 - Energy, Environment and Science Group
 - NSW Rural Fire Service,
 - · Sydney Water,
 - Endeavour Energy,
 - · Telstra; and
 - NBN Co.
- 5. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination. To ensure this timeframe can be met, public exhibition is to commence by September 2021, and the planning proposal is to be reported to Council by March 2022.

6. Council should be authorised to be the local plan-making authority.

12.07.21

Elizabeth Kimbell

Manager, Place & Infrastructure

13.07.21

Jane Grose

Director, Central (Western)