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Plan finalisation report – PP-2021-6242

Willoughby Local Environmental Plan 2012
(Amendment No 34) – Willoughby Comprehensive
LEP Review Planning Proposal

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Planning Proposal

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Acknowledgement 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.....	5
1.1.4	Proposed controls.....	6
1.1.5	State electorate and local member.....	7
2	Gateway determination and alterations	8
2.1	Gateway determination	8
2.2	Gateway alteration	9
3	Public exhibition	9
3.1	Submissions during the exhibition	10
3.1.1	Submissions supporting the proposal	10
3.1.2	Submissions objecting to and/or raising issues about the proposal.....	10
3.2	Advice from agencies	15
3.3	Post-exhibition changes.....	19
3.3.1	Council resolved changes	19
3.3.2	Employment Zones Reform.....	23
3.3.3	Department recommended changes	24
4	Department's assessment.....	25
4.1	Detailed assessment	26
4.1.1	Section 9.1 Ministerial Directions	26
4.1.2	Flooding impact	30
4.1.3	Contamination Impact.....	36
4.1.4	Implementation of St Leonards and Crows Nest 2036 Plan	39
4.1.4	Social and economic impact	39
4.1.5	Infrastructure	41
4.1.6	Environmental impact	42
4.2	Department's recommended changes	44
5	Post-assessment consultation	47
6	Recommendation.....	48
	Attachments	50

1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Willoughby Local Environmental Plan 2012 (Amendment No. 34).

Willoughby Council (Council) has undertaken a comprehensive review of the Willoughby Local Environmental Plan 2012 (WLEP) to give effect to the *North District Plan*, *Willoughby Local Strategic Planning Statement* (LSPS) and *Willoughby Local Housing Strategy* (LHS). The Department of Planning and Environment (the department) issued a Gateway determination for the planning proposal to proceed to exhibition in December 2021.

Council's Comprehensive LEP review planning proposal (the planning proposal) implements significant planning strategies to update and refine the planning controls as well as provide additional capacity for employment and housing growth in the Willoughby Local Government Area (LGA). Particularly, the proposal extends the Chatswood CBD boundaries and implements the *Chatswood CBD Planning and Urban Design Strategy 2036* (Chatswood CBD Strategy) that was conditionally endorsed by the department in 2019. The plan also implements the Local Centres Strategy, the St Leonards Crows Nest 2036 Plan (SLCN 2036 Plan) where it applies in the Willoughby LGA, and recommendations of Council's Industrial Lands Strategy.

The planning proposal also provides for improved design excellence and quality of development in the Chatswood CBD, introduces sustainability measures to address urban heat island effect, introduces or increases the affordable housing contribution rates in certain areas, and undertakes a review of planning controls in the LEP to address anomalies and errors (housekeeping amendments).

The planning proposal will introduce the department's Employment Zones reforms into the Willoughby LEP to align with the changes across the State to move from Business Zones and Industrial Zones to Employment Zones.

Willoughby Council submitted the planning proposal to the department for finalisation on 23 February 2023, following Council's resolution of 12 December 2022 to proceed to make the plan with post exhibition changes. This report outlines changes to the plan recommended by Council (**Table 5**) and the changes made by the department in finalising the plan (**Table 11**).

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal applies to the Willoughby LGA
Type	LGA
Council / LGA	Willoughby City Council
LGA	Willoughby

The Willoughby LGA is located approximately 10kms north of the Sydney CBD and covers an area of approximately 22.6km². It is bounded to the north by Ku-ring-gai LGA, to the east by Middle Harbour, to the south by North Sydney LGA, and to the south-west and west by Lane Cove LGA (**Figures 1 and 2**).

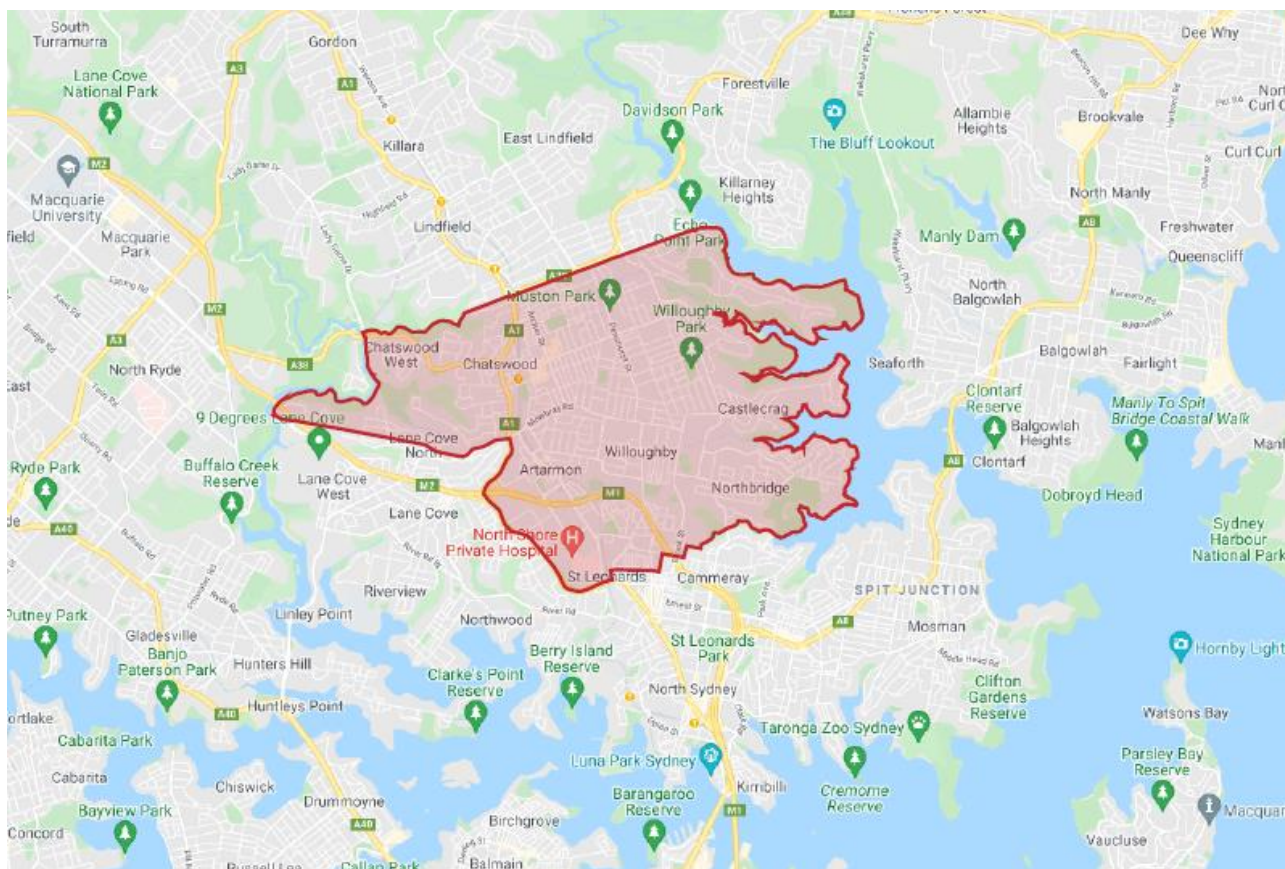


Figure 1: Willoughby LGA (source: Google Maps, overlay by the Department)

The Willoughby LGA is home to over 79,000 residents. Approximately 83% of the population work in the LGA with Chatswood alone providing employment for over 20,000 people.

The North District Plan identifies the Chatswood CBD (**Figures 2 and 3**) as a Strategic Centre. St Leonards (**Figures 2 and 4**) is also identified as a Strategic Centre and a planned Health and Education Precinct. Both centres are located within the Eastern Economic Corridor and are a major contributor towards NSW's economic growth.

The Willoughby LGA contains three industrial areas located in Artarmon, East Chatswood and Epping Road, Lane Cove North (**Figure 2**). These areas provide approximately 16.7% of jobs in Willoughby and play a vital role for the lower North Shore and the North District. Employment is expected to grow from 64,000 to 74,600 in 2036 with a 6,300-8,300 jobs target for Chatswood CBD. The Willoughby LGA contains eight local centres (**Figure 2**) which are important to providing services and jobs.

The Local Strategic Plan, *Our Future Willoughby 2028*, projects that there will be over 90,000 people living in the Willoughby LGA by 2036. This will increase the need for better amenity and sustainability to maintain and enhance liveability for existing and future residents.

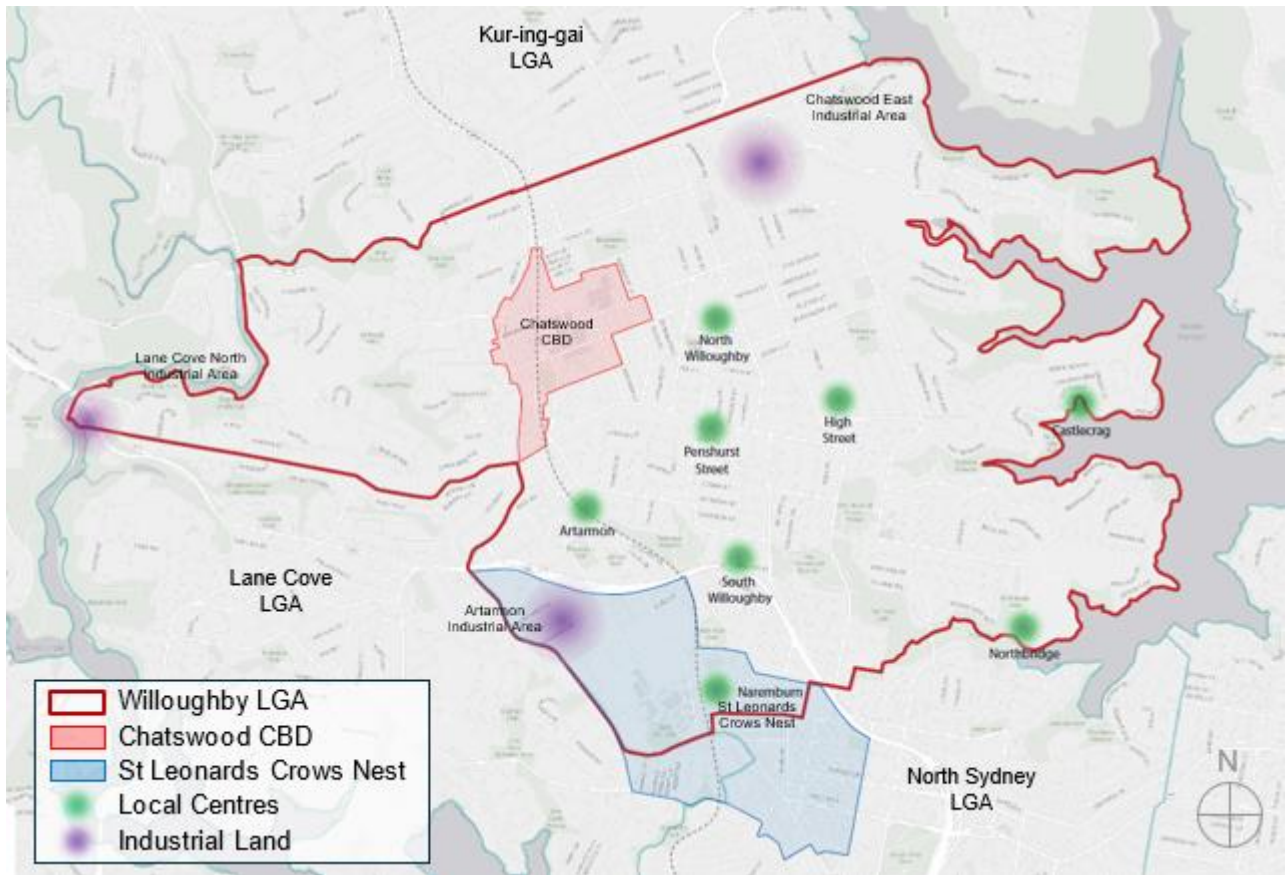


Figure 2: Willoughby LGA (source: Google Maps, overlay by the Department)



Figure 3: Expanded Chatswood CBD (source: Google Maps, overlay by the Department)



Figure 4: St Leonards Crows Nest 2036 Plan - Willoughby LGA boundary shown in blue outline (source: Google Maps, overlay by the Department)

1.1.3 Purpose of plan

The planning proposal seeks to update Willoughby LEP 2012 planning controls to implement the planning priorities and actions of the North District Plan, the Willoughby LSPS, the Willoughby LHS and various other strategic studies. It will provide planning controls and capacity for growth over the next 15-20 years consistent with Council's strategic planning studies. These changes will provide capacity for 6,400 new homes across the local government area and 8,300 new jobs.

The plan makes the following amendments to the Willoughby LEP 2012:

- increases height and floor space ratio and amends planning controls in the strategic centres of Chatswood CBD and St Leonards;
- expands the Chatswood CBD boundary area, introduces additional planning controls including sun access protection for key public open spaces, minimum lot sizes for commercial and mixed use development, and minimum non-residential floor space requirements for the mixed use zone;
- amends height and floor space controls to reflect the recommendations of the St Leonards and Crows Nest Plan 2036 for sites in the LGA;
- increases height and floor space controls and amends planning controls in the local centres of Artarmon, North Willoughby, Naremburn, Castlecrag, Northbridge, Penshurst Street, Willoughby and Willoughby South;
- amends the planning controls and permissible uses for certain sites in the industrial areas of Artarmon, East Chatswood and Lane Cove North;
- ensures adequate affordable housing is provided where residential density is increased where feasible;

- encourages sustainable and resilient development objectives, introduces a new urban heat clause and updates the existing design excellence clause;
- includes two additional heritage items in Schedule 5 of the LEP;
- makes efficiency improvements to the LEP including:
 - updating the airspace operations clause;
 - rezoning land for schools to SP2 Infrastructure;
 - removing properties identified for land acquisition that have been acquired and inclusion of new properties identified for land acquisition;
 - updates additional permitted uses to remove where superseded by the uplift in planning controls in the CBD; and
- housekeeping LEP amendments including:
 - correcting LEP clauses and removing superseded clauses where superseded by updated controls; and
 - updating map anomalies for heritage, dual occupancy restriction and land reservations.

1.1.4 Proposed controls

Council proposes to amend various clauses and introduce new provisions into parts of the existing Willoughby LEP 2012. The structure of the LEP remains unchanged and consistent with the Standard Instrument (SI LEP).

A summary of the proposed changes to Willoughby LEP 2012 is in **Table 2**. The detailed explanation of provisions can be found in **Attachment Q**.

Table 2 Summary overview of changes to the Willoughby LEP 2012

LEP Amendment	Summary
Part 1 – Preliminary	The aims of the plan have been revised to reflect updated local strategies and promote sustainability outcomes.
Part 2 – Permitted or prohibited development and Land Use Table	The aims and objectives of the zones have been revised to reflect updated wording consistent with the District Plan, State Environmental Planning Policies (SEPPs) and local strategies. The Employment Zone Reform will translate the current B and IN zones to E and MU zones (Attachment D8).
Part 4 Principal Development Standards	<p>Council proposes to repeal or amend clauses and subclauses that will be superseded by the implementation of local strategies:</p> <ul style="list-style-type: none"> • the Chatswood CBD Strategy (Attachment F3); • SLCN 2036 Plan (Attachment G); and • the Willoughby Local Centres Strategy (LCS) (Attachment J). <p>Changes are also proposed to implement the recommendations of the Willoughby Local Strategic Planning Statement (Attachment H).</p>
Part 6 Additional Local Provisions	Amend existing clauses and introduce new clauses. These will mainly support sustainable outcomes for the LGA.

LEP Amendment	Summary
Schedule 1 Additional permitted uses	<p>Clauses are to be deleted where no longer required or amended if the planning proposal amends the permitted uses or increases development potential, including:</p> <ul style="list-style-type: none"> • school sites rezoned to SP2 Infrastructure (Educational Establishment); • the translation of the zones as part of the Employment Zone Reform that will allow certain previously prohibited land uses. (For example, vehicle repair stations required an additional permitted use in the B5 zone. However, the new E3 Productivity Support zone now permits this use with consent). • a new provision to allow shop top housing where previously permitted under Schedule 1 for specific sites in a B5 and B7 zones, which are combining to become the E3 Productivity Support zone.
Schedule 2 Exempt development	<p>Minor amendments to remove clothing bins and replace signage (generally) provisions with temporary signage provisions in the exempt development schedule.</p>
Schedule 5 Environmental heritage	<p>2 new items of local heritage significance and amend existing items in Schedule 5, as follows:</p> <ul style="list-style-type: none"> • include the sites at Castlecrag (I253) and Artarmon (I254) in Schedule 5 as heritage items of local significance; and • amend the site at Castlecrag (I25) to include 233 and 233A Edinburgh Road and the realignment of the boundary and update the lot number at 256 Victoria Avenue, Chatswood (I133).
Dictionary	<p>Add terms to the Dictionary associated with the new clauses in Part 6 relating to urban heat management.</p>

1.1.5 State electorate and local member

The site falls within the Willoughby state electorate. Tim James MP is the State Member.

The site falls within the two federal electorates, the North Sydney federal electorate, where Kylea Tink MP is the Federal Member and the Bradfield federal electorate, where Paul Fletcher MP is the Federal Member. To the team's knowledge, neither federal MP has made any written representations regarding the proposal to the Department or the Minister.

Tim James MP has written to Council on 2 separate occasions concerning:

- Impact to the Artarmon Heritage Conservation Area (HCA) due to the DCP which provides circumstances where a complete demolition may be permitted in a heritage conservation area where the property is determined to be beyond repair; and
- a petition raising concern about the extension of the Chatswood CBD area.

Council has addressed these issues in their post exhibition report and submissions report (**Attachments D1a, D1b and D5**). In response to the heritage considerations, council requested a post exhibition change to update the objective of the zone and DCP. In response to the petition raising concern with the extension of the Chatswood CBD, Council has noted that the changes proposed under the LEP are consistent with the *Chatswood CBD Planning and Urban Design Strategy 2036*. **Table 3** summarises Council's responses to submissions.

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

There has been meetings and communications with a registered lobbyist with respect to this proposal. Two online meetings were held with Vicinity Centres and lobbyist, Tim Robertson, Tim Robertson Advisory concerning the site known as Chatswood Chase and the adjacent site at 5-7 Havilah Street, Chatswood:

- on 27 July 2022, concerns were raised regarding:
 - the proposed blanket 10% affordable housing contribution with applicant to provide feasibility data;
 - the need for active street frontage to Havilah Street; and
 - the removal of serviced apartments.
- on 21 October 2022, discussion included the proposed impact of the affordable housing contribution under the draft Willoughby Comprehensive LEP on the development of this site.

At both of these meetings, the Department provided an update on the timing of the finalisation and advised that any changes if required will be considered at finalisation of the plan. Further discussion of affordable housing contributions changes is included in section 4 of this report.

2 Gateway determination and alterations

2.1 Gateway determination

The Gateway determination issued on 24 December 2021 determined that the proposal should proceed subject to conditions (**Attachment B1**). The conditions required specific matters to be addressed prior to public exhibition and various administrative updates relating to changes to the SEPPs and changes to the Ministerial Directions.

The key conditions required updates to:

- Address inconsistencies with section 9.1 Ministerial directions and updates to reference the revised directions dated March 2022.
- Address consistency with State Environmental Planning Policies (SEPPs) and updates to reference the consolidated SEPPs dated March 2022.
- Concisely state the objectives and intended outcomes of the planning proposal, as well as include reference to the Local Housing Strategy priorities and actions.
- Align the proposal to include all land north of Chandos St as referenced in the St Leonards and Crows Nest 2036 Plan.
- Clarify whether the FSR uplift to 2:1 will apply for all land zoned IN2 Light Industrial and provide information on the local road network capacity with regard to this change.
- Require the alignment of affordable housing contributions with the findings of the Affordable Housing Feasibility Report.
- Consider alternative mechanisms in implementing the proposed GFA provisions for R2 Low Density Residential zones.
- Align the urban heat provisions with recently made provisions in Cumberland LEP 2021.
- Remove pet day care as a stand-alone permitted use.
- Require the submission of digital mapping in the spatial viewer.
- Additionally, to address Direction 2.6 Remediation of Contaminated Land, Council was required to undertake an assessment of any land to be rezoned from non-residential to residential uses in accordance with the direction.

Conditions also recommended advisory notes be included in the planning proposal to:

- reference the Employment Zones Reform Framework to note the translation of employment zones as it relates to the proposed amendments; and
- provide clarity that the draft clauses prepared by Council are indicative only and will be subject to drafting by Parliamentary Counsel.

Conditions also required administrative attachments to include:

- all strategies and studies upfront in the planning proposal;
- reflect updates made by recently completed proposals to the LEP; and
- a list of site specific planning proposals being considered separately that have progressed ahead of the comprehensive review.

Council addressed the conditions through updates to the planning proposal and was not required to re-submit the planning proposal to the department for approval prior to the exhibition.

Consistency with section 9.1 Ministerial directions is discussed in section 4.1 of this report.

Affordable housing contributions and proposed GFA provisions for R2 Low Density Residential zones are discussed in section 4 of this report.

The department has reviewed the conditions and a summary of compliance with all Gateway conditions is at **Attachment P**. It is considered that the conditions were adequately addressed to allow the plan to progress to exhibition.

2.2 Gateway alteration

Council requested a Gateway alteration to delete a condition on the determination, under 1(c) State Environmental Planning Policies, which specified that dual occupancies should be retained as permitted with consent on the battle-axe lots.

Council proposed to prohibit dual occupancies on all battle-axe sites, on the basis that this was consistent with the Codes SEPP and noted the low number of development applications for this type of development. The department issued a Gateway alteration on 15 March 2022 to remove the condition (**Attachment C**). However, the suitability of this change has been considered as part of the finalisation of the plan and is discussed further in section 3 and section 4.2.

The Gateway completion date is 24 June 2023. However, this timeframe can be exceeded without an alteration and the LEP will be completed and notified on 30 June 2023. This follows the approval of the Employment zones Standard Instrument (Local Environmental Plans) Amendment (Willoughby) Order 2023 at the Executive Council meeting on 28 June 2023. The Standard Instrument Amendment Order will also be notified on 30 June 2023.

3 Public exhibition

In accordance with the Gateway determination, the proposal was publicly exhibited for 85 days from 15 March 2022 to 7 June 2022 (3 months). This exceeded the minimum 28 day public exhibition requirement of the Gateway determination.

Council undertook extensive consultation with the community during public exhibition. During this time, 714 people participated in 12 webinars. Comments were provided by 288 people on the draft plans through Council's 'Have Your Say'. Of these, 227 responses were from individuals, and 61 responses were from organisations or groups.

A petition with 638 signatures was received after the exhibition specifically objecting to the extension of the Chatswood CBD to the north. This petition was also brought to the attention of Council in a letter from the NSW State Member for Willoughby, Tim James MP, as outlined in section 1.15 of this report.

Council did not hold a public hearing regarding the Council owned carpark at Northbridge Plaza, as Council resolved post-exhibition to remove the public land proposed to be reclassified and rezoned from the planning proposal, to allow a further study to be undertaken. This can be reconsidered by Council through a separate planning proposal.

3.1 Submissions during the exhibition

In total, 323 submissions were received by Council including 17 responses from agencies and local councils. Council continued to receive late submissions after exhibition closed. Approximately 35 submissions were received following exhibition.

Council engaged a specialised community engagement organisation to carry out an independent review of feedback received during the public exhibition which concluded on Council's website on 7 June 2022.

Of the 288 responses analysed in the independent review, 157 submissions (55%) objected to one or more of the changes proposed, 96 submissions (33%) were neutral and 33 submissions (12%) were in support.

3.1.1 Submissions supporting the proposal

The 33 submissions in support were in relation to the following aspects of the proposal:

- Improved pedestrian and bike networks
- Inclusion of the urban heat map clause
- Inclusion of design excellence clause
- Retaining the leafy character and protecting tree canopy and vegetation
- Improved open space and walkable neighbourhoods
- Elevation of landscape controls in low rise residential areas

3.1.2 Submissions objecting to and/or raising issues about the proposal

There were 157 submissions that objected to or raised issues about the proposal the key issues raised are summarised in **Table 3**.

Table 3 Summary of Key issues raised during the public exhibition

Issue Raised	Council Response	Department Comment
<p>Parking and traffic</p> <p>A total of 48 (17%) submissions raised issues with parking. Of these 31 (65%) were not supportive, 16 (35%) neutral and 1 supported the changes.</p> <p>A total of 21 (7%) submissions raised issues with traffic. Of these 14 (67%) objected and 7 (33%) were neutral.</p>	<p>A Future Conditions Report assessed the likely traffic impact with results suggesting that with a variety of recommendations to manage congestion, the road network has the capacity to accommodate the uplift proposed in the Chatswood CBD Strategy. These findings were supported by TfNSW.</p> <p>The Draft DCP proposed to reduce parking rates in Chatswood due to the public transport options offered. Principles of Travel Demand Management (TDM) are being</p>	<p>Revised post-exhibition parking rates in the DCP for the Chatswood and St Leonards CBDs are supported by an independent review following concerns raised during exhibition.</p> <p>The revised DCP endorsed by Council on 22 May 2023 reduces parking rates in Chatswood close to highly accessible transport options.</p> <p>Further assessment of the traffic and parking impacts can be carried out as part of any future DA or planning proposal.</p>

Issue Raised	Council Response	Department Comment
	<p>applied to promote a mode shift from private vehicles travel to walking, cycling, public and shared transport.</p> <p>A review of parking rates was undertaken which recommended maximum car parking rates for Chatswood and St Leonards.</p> <p>Revised parking rates for regional shopping centres were reviewed based on submissions. A revised rate recommended a maximum rate of 1 parking space per 40m² and minimum rate of 1 space per 70m² for regional shopping centres with more than 30,000m² of retail GFA. The new minimum rate will ensure adequate parking for regional shopping centres into the future.</p>	<p>The Department considers Council has adequately responded to submissions with regards to parking and traffic generation.</p> <p>Traffic and parking impacts are discussed in section 4.1.6</p>
<p>Height and density in Chatswood</p> <p>A total of 112 (39%) submissions raised issues with the proposed height and density in Chatswood. Of these 85 (76%) objected and 18 (16%) were supportive.</p>	<p>The draft LEP implements controls that align with the Chatswood CBD Strategy which has been endorsed by Council and the Department. The strategy has been in preparation since 2017. It is a well-considered strategy to provide for the growth of Chatswood as a strong commercial centre, with an expanded boundary for housing growth.</p> <p>Community concerns have been considered by Council during consultation on the Chatswood CBD Strategy and refinements were made to height and density following urban design analysis.</p> <p>All controls proposed in the draft LEP are consistent with the CBD Strategy.</p> <p>Council proposes no post-exhibition changes to the planning proposal with regards to height and density in Chatswood.</p>	<p>The Department considers Council has adequately responded to concerns raised in submissions with regards to height and density in the Chatswood CBD.</p> <p>The proposed increase in the planning provisions for sites in the Chatswood CBD are justified as it aligns with the endorsed CBD Strategy (Attachment F2).</p>

Issue Raised	Council Response	Department Comment
<p>Height and density in St Leonards</p> <p>Several submissions were received objecting to proposed new heights in St Leonards CBD. The majority of which were regarding an increase in height of a site at 207 Pacific Highway, St Leonards and view loss to existing residential properties.</p>	<p>The St Leonards and Crows Nest 2036 Plan was finalised by the Department in August 2020.</p> <p>Ministerial Direction 1.13 requires Council to ensure a Planning Proposal is consistent with the SLCN 2036 Plan.</p> <p>Council has recommended a post-exhibition change for the maximum building height from 77m to 83m in order to accommodate a 25 storey commercial building with floor-to-floor heights of 3.3m.</p> <p>Council stated that the suggested uplift for 207 Pacific Highway to 104.6m was not consistent with the SLCN 2036 Plan.</p> <p>The concept of view sharing can be further reviewed through design excellence and the development application process.</p>	<p>The Department also received a submission regarding Council's post-exhibition floor-to-floor heights for 207 Pacific Highway. This submission stated that a floor-to-floor height of 3.8m was needed for an A-grade office building plus 9.6m for rooftop plant. This would result in an overall HOB of 104.6m.</p> <p>The requested height of 104.6m for the site is not supported as it would be a substantial variation from the SLCN 2036 Plan and the planning proposal as exhibited.</p> <p>The Department considers Council's post-exhibition amendment is reasonable, acknowledging the initial underestimation of floor-to-floor heights. This post exhibition change is discussed further in section 3.3.1.</p> <p>The controls for St Leonards are justified as it aligns with the SLCN 2036 Plan (Attachment G), as required under Ministerial Direction 1.13.</p>
<p>Permissibility of serviced apartments in the Chatswood CBD</p> <p>Submissions referred to various issues with serviced apartments as a land use:</p> <ul style="list-style-type: none"> request for a change of use to residential to be able to rent serviced apartments for longer than the 3-month maximum time limit; retain the land use and change the zoning to B4 Mixed Use; and retain the land use in the B3 Commercial Core. 	<p>Serviced apartments are proposed to be prohibited in the E2 Commercial Centre zone. This was recommended in the Chatswood CBD Strategy. Council's concern is that serviced apartments are developed at the expense of office land use.</p> <p>Existing serviced apartments within the E2 Commercial Centre zone will continue to be permitted under existing use rights.</p> <p>Council does not recommend changes to remove the prohibition of serviced apartments in the E2 Commercial Centre zone, nor permit</p>	<p>The prohibition of residential land uses within the E2 Commercial Centre zone (former B3 zone) aligns with the key principle of the CBD Strategy to promote office growth in this zone.</p> <p>In the SI LEP, the objectives of the E2 zone are to enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.</p> <p>The Department's endorsement of the Chatswood CBD Strategy stated that no residential land uses were to be permitted west of the North Shore rail corridor as there was further opportunity for</p>

Issue Raised	Council Response	Department Comment
	residential uses in the E2 Commercial Centre zone.	<p>office growth in this zone (Attachment F1 and F2).</p> <p>The endorsement noted E2 zoned land to the east of the North Shore line could be considered for residential land uses if it resulted in demonstrable and assured jobs growth among other things.</p> <p>The Department considers Council has responded adequately to this issue.</p>
<p>Concerns with a perceived loophole in the heritage controls</p> <p>A number of submissions raised concerns about a perceived 'loophole' in the DCP which could enable justification for demolition in conservation areas.</p> <p>A total of 25 (9%) submissions raised issues with heritage. Of these 15 (60%) objected, 7 neutral (28%) and 3 (12%) were supportive.</p>	<p>Council have recommended substantial post-exhibition changes to the heritage provisions in the DCP to ensure demolition of contributory buildings in heritage conservation areas only occurs in the most exceptional circumstances. This includes the requirement of a Structural Stability Report.</p> <p>Additionally, the aims of R2 Low Density Residential in the LEP are proposed to be amended to strengthen the need to preserve properties in conservation areas.</p>	<p>Clause 5.10 Heritage conservation of the LEP may require a heritage management document to be prepared for development that may affect a heritage item or HCA.</p> <p>The post-exhibition amendment to heritage controls in the DCP supports the heritage provisions in the LEP.</p> <p>The Department considers Council has adequately responded to this issue and supports the minor post exhibition change in the LEP to include an aim to ensure heritage values are not compromised by new development. New and amendment local heritage items are discussed in section 4.</p>
<p>Affordable housing contribution rates</p> <p>Submissions from residents supported an increase in the affordable housing rate while property developers raised concern with the feasibility of projects.</p> <p>A total of 34 (12%) submissions raised issues with affordable housing. Of these 15 (44%) objected, 15 neutral (44%) and 4 (12%) were supportive.</p>	<p>Council has been applying a flat percentage rate of 4% for affordable housing to specific areas in Chatswood since 1999.</p> <p>A study was undertaken to test the feasibility of having a general 10% contribution rate for affordable housing across the LGA.</p> <p>On 12 December 2022, Council resolved to apply affordable housing contributions according to the feasibility report and not the proposed 10% flat rate as exhibited and to apply a savings</p>	<p>Council has resolved to apply the affordable housing contribution rates in the Feasibility Study.</p> <p>4% affordable housing contribution rate will continue to apply to negotiated planning proposals lodged prior to the end of the exhibition period will continue as resolved by Council.</p> <p>Council has made changes post-exhibition to the planning proposal to align with the Feasibility Study.</p>

Issue Raised	Council Response	Department Comment
	provision for already negotiated planning proposals.	<p>The Department has recommended further changes to the affordable housing contribution rate which is outlined in Table 11 and section 4.</p> <p>Affordable Housing is discussed further in section 4.1.</p>
<p>Planning controls on the foreshore building line</p> <p>A number of submissions raised concerns regarding built structures below the Foreshore Building Line, in particular, negative impacts as a result of structures currently permitted in the foreshore area under the current clause.</p>	<p>The planning proposal did not include any amendments to the Foreshore Building Line location or controls.</p> <p>Council recommends adding an internal review of the planning controls in the foreshore building line to its work plan to commence in the 2023/24 financial year and include appropriate consultation and engagement.</p>	<p>The Department considers Council has responded adequately to this issue.</p> <p>Any amendments to the Foreshore Building Line controls will need to be submitted in a planning proposal and subject to further public exhibition.</p>
<p>Dual Occupancy on battle-axe lots</p> <p>There was an equal number of responses during the public exhibition supporting and opposing the prohibition of dual occupancies.</p> <p>Some indicated that these changes were too strict and if permitted would provide more diverse housing options in their area. Other submissions considered that the development in the battle-axe configuration would result in loss of green space and trees.</p>	<p>Council's intention in proposing to prohibit battle axe dual occupancy development is to be consistent with the Codes SEPP.</p> <p>Over the past 5 years Council has received 42 applications for dual occupancy. Of these, 6 included a battle axe configuration. Of the 6 battle axe proposals – 2 were approved, 3 were refused and 1 was withdrawn.</p> <p>Council considers the dwellings target can be achieved by implementing the changes proposed in the comprehensive LEP without this type of housing development.</p>	<p>The Department notes that there are a small number of lots involved and a limited number of development applications received by Council. However, the blanket prohibition of dual occupancies in the battle-axe configuration is not supported. Merit assessment of dual occupancy on battle axe lots is appropriate.</p> <p>It is recommended that Council continue to permit dual occupancy in the battle-axe configuration. This will allow for a merit-based assessment as part of future development applications.</p> <p>The Department's recommendation is further discussed in Table 11 in section 4.</p>
<p>Extending the boundary of the Chatswood CBD</p> <p>Submissions raised concerns with the extension of the Chatswood CBD north and south along the rail corridor to allow for</p>	<p>The proposed extension to the Chatswood CBD implements recommendations in the Chatswood CBD Strategy which was endorsed by Council and the Department.</p>	<p>The Department considers Council has responded adequately to this issue.</p> <p>The transport and traffic issues are discussed further in section 4.1.</p>

Issue Raised	Council Response	Department Comment
residential growth beyond the core commercial area. Concerns were around road network capacity and safety	The Future Conditions Report (Attachment D6) confirms that, subject to a variety of recommendations to manage congestion, the road network has the capacity to safely accommodate uplift in the extended Chatswood CBD.	
Height and density in North Willoughby and Penshurst Street Submissions raised concerns with proposed height and density uplift in North Willoughby and Penshurst Street.	Proposed height and density uplift in North Willoughby and Penshurst Street are defined in the Local Centres Strategy in order to stimulate economic and residential growth.	Department considers the proposed uplift on sites in the North Willoughby and Penshurst Street business centres to be consistent with the Local Centre Strategy (Attachment J). The Department considers Council has responded adequately to this issue.
Site specific requests mostly seeking increases in development potential Some landowners requested site specific increases above the proposed planning provisions.	Council acknowledges that strong cases have been provided for substantial uplift. However, these are not consistent with the adopted strategies. Significant changes to the planning proposal to support further uplift will require re-exhibition and would interfere with the timing of the finalisation.	The Department considers Council has responded adequately to this issue. Any increase to the planning provisions can be considered in site-specific planning proposals and subject to further public exhibition. These requests cannot be considered in the Comprehensive LEP Review planning proposal.

3.1.3 Submissions received by the Department

The Department received correspondence regarding the planning proposal during the exhibition and post-exhibition periods. Most of this correspondence was also received by Council and the issues have been raised in submissions which have been considered in its submissions report.

The Department has also considered the issues raised in the detailed assessment in section 4 of this report, where post-exhibition changes by Council and the Department are discussed.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with multiple agencies and adjoining councils. Ausgrid and Ku-ring-gai, Mosman and Lane Cove Council did not make a submission. The Greater Cities Commission stated that a response was not required from them. Post-exhibition, Crown Lands raised no issues with the planning proposal in a direct response to the Department. Submissions were received from 9 other agencies and are summarised in **Table 4**.

Table 4 Advice from public authorities/agencies

Agency	Advice raised	Council response/DPE comment
Transport for NSW	<p>TfNSW raised no objections to the changes proposed as part of the LEP review.</p> <p>All existing TfNSW corridors and reservations are to be maintained and shown in the Land Zoning and Land Reservation Acquisition (LRA) maps as SP2 Infrastructure. No new reservations are to be added or amended without prior consent.</p> <p>TfNSW will provide data to Council in separate correspondence.</p> <p>TfNSW advised after the submission of the data that land adjacent to Flat Rock Creek, Naremburn was surplus to their needs and should be removed from the map.</p>	<p>Council has received the data to amend the LRA maps. The updated LRA maps have been submitted to the Department post-exhibition and updates to LRA maps have been confirmed to align. The changes to the LRA maps can be viewed in Attachment T.</p> <p>The Future Conditions Report (Attachment D6) compares the growth scenarios presented in the Chatswood CBD Strategy to the TfNSW base forecasts to determine the likely impact on the future transport network.</p> <p>The Department considers that Council has responded adequately to this submission.</p> <p>The LRA and Traffic and transport is discussed further in section 4.</p>
Sydney Water	<p>Sydney Water advised that amplifications or extensions to networks may be required. It is critical that Council provide annual growth data to enable Sydney Water to effectively plan and coordinate works for continued supply and mitigate road disruptions.</p>	<p>The response was noted.</p> <p>Council has provided the requested development data.</p> <p>The Department considers that Council has responded adequately.</p>
Department of Health – Northern Sydney Local Health District (NSLHD)	<p>NSLHD notes that the proposed increase in the planning provisions could:</p> <ul style="list-style-type: none"> • impact the Ambulance Service of NSW's Royal North Shore Hospital (RNSH) flight path; • increase demand on essential services at RNSH; • impact on emergency service vehicles with increased traffic; and • increase demand for RNSH parking and transport impacting RNSH staff, patients and visitors. 	<p>Planning controls for St Leonards have been determined by the State Government's SLCN 2036 Plan and is being implemented by the Willoughby, North Sydney and Lane Cove Council's through individual LEPs.</p> <p>The Department considered this issue raised by NSW Health required further resolution. Further consultation was undertaken with NSLHD and NSW Ambulance.</p> <p>The Department recommends the inclusion of a local clause in the LEP with matters for consideration in the assessment of any DA for those sites within the Ambulance Service flight path.</p> <p>This will ensure that as part of any future development application impacts to the helicopter flight path would be</p>

Agency	Advice raised	Council response/DPE comment
		<p>considered through the submission of an aviation report.</p> <p>The traffic impact in the area was assessed during the implementation of the SLCN 2036 Plan. It was determined that the transport and traffic networks can be appropriately managed and mitigated through the proposed infrastructure improvements. The traffic impact is discussed in section 4.1.</p> <p>Recommendations concerning NSLHD and NSW Ambulance response is discussed in section 3.2 with a recommendation in Table 11 and section 6.</p>
<p>Environment, Energy and Heritage Group (EHG) (former Environment Energy and Science)</p>	<p>EHG raised concern about the consistency assessment with Ministerial Directions 4.1 Flooding as the planning proposal seeks to increase density on land identified as flood prone land, for example, Hampden Road, in the Artarmon Local Centre and Willoughby Road in the South Willoughby Local Centre.</p> <p>EHG recommends that Council reviews the extent of flood prone land to determine where the direction is to be considered.</p> <p>EHG advises that DCP controls cannot be substituted for consideration of the direction at the planning proposal stage.</p>	<p>In addressing the EHG submission in its post-exhibition report, Council states that they are aware of areas subject to overland flow. This has been taken into consideration particularly for increases in density in areas such as Artarmon and Willoughby South Local Centres.</p> <p>Council consider that flood constraints identified for specific development lots do not prohibit development of those sites under existing or proposed LEP / DCP controls. The proposed heights and FSRs are maximum controls that allow for design flexibility to respond to site specific constraints.</p> <p>The Department considered this issue raised by EHG required further resolution. Independent advice was sought on the consistency assessment relating to land identified as flood prone land where increased density is sought.</p> <p>The 9.1 Direction and flooding impact is discussed further in section 4.1 and 4.2 including the Department's response and recommended changes in Table 11 and section 6.</p>
<p>Department of Education – SINSW</p>	<p>Future housing growth will affect the future student population across the 6 primary and 4 secondary schools that service the Willoughby LGA.</p> <p>Chatswood Public School and High School are to be upgraded and a new</p>	<p>The response was noted by council.</p> <p>Willoughby's Integrated Transport Strategy 2036 notes it is a current council initiative to complete Movement and Place Plans for its CBDs</p>

Agency	Advice raised	Council response/DPE comment
	<p>primary school announced. SINSW has requested that Council generally monitor and consider the cumulative impact of population growth on schools.</p> <p>SINSW is supportive of the proposal to rezone school sites to SP2 Infrastructure (Educational Establishment).</p> <p>SINSW requests that transport planning be guided by the NSW Government Movement and Place Framework and its Built Environment Performance Indicators.</p>	<p>(Chatswood and St Leonards) and local centres.</p> <p>Council is currently piloting its first Movement and Place Plan for Victoria Avenue, Chatswood, with a view to applying the concept across a range of other plans and projects.</p> <p>The Department considers that Council has responded adequately to this submission.</p>
Heritage NSW	Heritage NSW encourages the listing of local heritage items but does not have a role in their approval.	<p>The response was noted by council.</p> <p>The Department considers no further action is necessary.</p>
Crown Lands	Crown Lands did not make a submission on the planning proposal during the exhibition period. On 19 April 2023, Crown Lands advised the Department that no issues were identified.	The Department considers no further action is necessary.
Sydney Airport Corporation Limited (SACL)	<p>SACL advised that any proposed developments that will potentially penetrate prescribed airspace must be approved by the Federal Department of Infrastructure, Transport, Regional development and Communications prior to their construction.</p> <p>Objects above 100m above ground must be referred to CASA.</p>	<p>The response was noted by Council.</p> <p>The wording in Clause 6.6 Airspace operations has been updated in accordance with the advice previously received from SACL.</p> <p>The Department considers that Council has responded adequately to this submission. Further approvals will be required at DA stage should the proposed height or structures for construction intrude into the protected airspace.</p>
Civil Aviation Safety Authority (CASA)	CASA referred to comments from Sydney Airport.	Refer to SACL response above.
Department of Transport, Infrastructure, Regional Development and Communications and the Arts (DTIRDCA).	The Commonwealth department agreed with the revised wording relating to airspace matters, noting Council should continue to engage with Sydney Airport where there is potential for building or construction equipment intrusions into prescribed airspace.	<p>The response was noted by council.</p> <p>The Department considers no further action is necessary - any issues can be dealt with at the DA stage.</p>

Agency	Advice raised	Council response/DPE comment
North Sydney Council	North Sydney Council raised no objections to the planning proposal and DCP.	The response was noted by council. The Department also notes the response.
Northern Beaches Council	Northern Beaches Council raised no objections. They were supportive of the proposed: <ul style="list-style-type: none"> local clauses - Sun Access, Landscaping and Urban heat; prohibiting centre-based childcare in industrial zones; consistency in development allowed under the Codes SEPP in the R2 Low Density Residential zone. 	The response was noted by council. The Department also notes the response.

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At Council's Ordinary Meeting on 12 December 2022, Council resolved to proceed with the planning proposal with the following post exhibition changes:

- Approve several amendments to the exhibited planning proposal as listed in Council's post exhibition report (**Attachment D1a and D1b**) and forward to the Department for finalisation. These are summarised below in Table 5.
- Retain the existing controls for the Northbridge Plaza and car park and shopping centre and seek a Gateway determination for a separate planning proposal for the amendments and reclassification of the land; and
- Amend objectives of the E1 Local Centre zone to provide shop top housing to maintain active retail and business land uses at street level.

The post-exhibition changes made to the exhibited planning proposal are available in **Attachment D3** and the changes made to the mapping are available in **Attachment D4**.

Table 5 Council's key post-exhibition changes to the planning proposal

Post Exhibition Change	Council Justification	Department Comment
1. Affordable housing <ul style="list-style-type: none"> • The affordable housing contribution will be applied in the LGA according to the feasibility report and not the proposed 10% flat rate as exhibited. • Introduce an affordable housing map 	Council resolved to apply the affordable housing contribution consistent with the Feasibility Report (Attachment M) instead of the intended flat rate of 10%. This rate will now be varied across certain areas to apply 4%, 7% and 10%.	The Department notes it was Council's intent to seek community feedback during public exhibition prior to implementing any changes to the affordable housing contribution rate. The Department supports:

Post Exhibition Change	Council Justification	Department Comment
<ul style="list-style-type: none"> A savings provision that retains 4% rate to apply to negotiated site specific planning proposals lodged before the making of this LEP; and Reword clause 6.8 Affordable housing to remove 2(a)-(c) and make changes to exclude areas used to access the dwelling in the gross floor area calculations, as recommended in the post exhibition report. 	A new Affordable Housing Contribution Map will be introduced removing affordable housing from the Special Provisions Area map.	<ul style="list-style-type: none"> the introduction of varied affordable housing rates from 4%, 7% and 10% to be consistent with condition (1)(l) of the Gateway determination; the introduction of an Affordable Housing Contribution Map; and rewording of the clause which seeks to clarify existing practice which has been subject to Parliamentary Counsel drafting. <p>The affordable housing contributions are discussed further in section 4.1.</p>
2. Remove reclassification and rezoning of the Northbridge Plaza and car park.	Council will remove the rezoning and reclassification of the Northbridge Plaza and car park site and will reconsider this site due to community concerns. This will be progressed as a separate planning proposal at a later date after further public consultation.	<p>The Department supports Council's decision to remove this site from the planning proposal.</p> <p>This is discussed further in section 4.1.</p>
3. Amending the controls for sites with planning proposals that been made prior to the Comprehensive review LEP or have progressed as a separate planning proposal.	<p>The LEP will reflect the finalised controls of planning proposals made ahead of the LEP. However, will retain the existing planning controls for current planning proposals that have not been made.</p> <p>Council have stated that a savings provision will apply for negotiated planning proposals lodged before the exhibition period to apply a 4% affordable housing contribution.</p>	<p>The Department raises no objection as this change is consistent with condition 1(k) of the Gateway determination.</p> <p>A list of all planning proposals in progress ahead of the Comprehensive LEP Review are at Attachment E.</p> <p>Site specific requests have been received by the Department and are addressed in section 4.1.</p>
4. Amend Height of buildings map at 207 Pacific Highway St Leonards. This site is covered by the St Leonards Crows Nest Plan 2036 (SLCN Plan).	<p>LEP height of buildings maps are required to indicate heights in metres not storeys.</p> <p>As the St Leonards Crows Nest 2036 Plan recommends height in storeys, council estimated a storey height (floor-to-floor) to be 3m.</p>	<p>Willoughby's LEP refers to heights in metres not storeys. In the recommended changes to the LEP (Attachment D1a and D1b), Council acknowledges that there was an underestimation in the calculation of the heights with the floor-to-floor taken as 3m instead of 3.3m for commercial floor</p>

Post Exhibition Change	Council Justification	Department Comment
	<p>In response to submissions, Council has acknowledged that the height was an under estimation for the site at 207 Pacific Highway.</p> <p>Council has made a post exhibition change to increase the height from 77m to 83m to better align with the 25 storey recommended height under the SLCN plan.</p>	<p>space. This would mean that the overall height would equate to approximately 83m.</p> <p>The Department supports Council's proposed change as the revised height is a more accurate translation of the heights from the storeys indicated in the SLCN 2036 Plan. It is considered that re-exhibition is not required.</p> <p>The is discussed further in section 4.</p>
<p>5. Amend the exhibited HOB at the council car park site <u>adjacent to</u> 2-10 Chandos Street from 26m to 41m (13 storeys).</p> <p>This site is covered by the St Leonards Crows Nest Plan 2036 (SLCN Plan).</p>	<p>As the St Leonards Crows Nest 2036 Plan recommends height in storeys, the site has a recommended height of 13 storeys.</p> <p>Council notes a drafting error occurred where the exhibited plan included the existing height of 26m instead of the proposed height of 41m.</p> <p>The height will be corrected to align with the number of storeys and changed to 41m.</p>	<p>The Department supports Council's proposed change as the revised height is an accurate translation of the heights from the storeys indicated in the SLCN 2036 Plan.</p> <p>It is considered that re-exhibition is not required.</p>
<p>6. Land reservation for road widening at Olive Lane, Artarmon.</p>	<p>The proposed road widening at Olive Lane, Artarmon is no longer required and should be removed from the land acquisition map at 11 Parkes Road, Artarmon.</p>	<p>The Department notes this post exhibition change.</p>
<p>7. Implementation of Employment zones</p>	<p>The employment zones reform and translation of zones was exhibited with the planning proposal. The LEP will be updated to implement the new zone names from business and industrial to employment and new land use tables.</p> <p>As far as possible the retention of existing controls have continued, however with combining the zones some permitted land uses will change.</p> <p>Additional permitted uses have been added in E3 Productivity</p>	<p>The Department supports the proposed change which is discussed in further detail in section 3.3.2.</p>

Post Exhibition Change	Council Justification	Department Comment
	Support for land formerly in the B5 zone to retain permissibility of shop-top housing on specific land.	
8. Errors to be rectified		
(a) Sun access protection reference to Chatswood Oval be included in the final wording to be protected public open space.	The exhibited planning proposal included a copy of the sun access map from the Chatswood CBD strategy that clearly shows Chatswood Oval as being included.	The Department supports the inclusion of Chatswood Oval in the sun access protection clause.
(b) Height control should only include 57-69 Strathallen not 128 Sailors Bay Road	The Height of Building map incorrectly included the adjoining site at 128 Sailors Bay Road as 17m and incorporated it into the Affordable Housing map.	The Department notes this post exhibition change to amend the Height of Buildings map for 128 Sailors Bay Road to 14m and remove it from the Affordable housing map.
(c) Rectify mapping to ensure the entire site at 2A Chandos Street is included in the FSR map.	A section of 2A Chandos Street was omitted in the proposed FSR map and will be included in the mapping.	The Department notes this post exhibition change to amend the FSR map to include the entire site which reflects the recommended controls under the SLCN 2036 Plan.
(d) Land at 168 - 170 Epping Road Lane Cove North	Council intends to add a conservation zone for riparian protection along the foreshore of the Lane Cove River. The C2 environmental zone will include part of the industrial zoned land at 168-170 Epping Road. A post exhibition change was made by council to rectify an error in the location of the zone to follow the local government boundary instead of the site boundary.	The post exhibition change by Council is noted. The Department has considered the proposed C2 Environmental Conservation zoning in section 4.2 of the report and has recommended a post exhibition change to remove the C2 zoning from the LEP until further investigation has been undertaken.
(e) Landscape clause objectives	Council made a post exhibition change to strengthen the proposed wording to link with the urban heat clause.	The post exhibition change by Council is noted. The Department has recommended a post exhibition change to remove the landscaping clause from the LEP. This is discussed in section 4 of the report.
(f) Clarification of Design Excellence clause	Council made a post exhibition change to make reference to compliance with the Design	In the drafting of the LEP it was noted that the Design Excellence Guidelines are already

Post Exhibition Change	Council Justification	Department Comment
	Excellence Guidelines as part of the architectural design competition.	referenced in the clause relating to architectural design competition. No further changes were considered necessary.
(g) Street Frontages clarification	Council has made a post exhibition change to clarify wording of the active street frontages clause and to include zone references	The final clause has been drafted by Parliamentary Counsel and gives effect to the intent of the clause to promote active street frontages.
(h) Amending R2 zone objectives relating to heritage	The aims of the R2 zone were updated in response to submissions regarding demolition in HCAs to ensure these areas were not compromised by new development.	The Department raises no objection as this change to the zone objective responds to submissions.

The Department considers Council's post-exhibition changes are justified as they:

- respond to matters raised during the public exhibition by the community and agencies;
- reflect the resolution of Council on 12 December 2022 to finalise the planning proposal;
- are administrative in nature and correct errors; and
- remove aspects to allow further consideration and consultation through a subsequent planning proposal.

3.3.2 Employment Zones Reform

Changes to the employment zones as part of the Department's Employment Zones Reform commenced on 26 April 2023. However, the Willoughby LEP was not amended at this time as the implementation of the employment zones is intended to be completed in this planning proposal.

The translation of the employment zones including the Land Use Table was exhibited with the Comprehensive review planning proposal (**Attachment D8**).

The reforms replaced the existing Business (B) and Industrial (IN) zones with five new employment zones and 3 supporting zones under SI LEP.

In the Willoughby LEP, the following will apply:

- B1 and B2 zones combined into the E1 Local Centre zone;
- B3 Commercial Core zone will become the E2 Commercial Centre;
- B4 zone will become the MU1 Mixed Use zone;
- B5 Business Development and the B7 Business Park will become the E3 Productivity Support zone; and
- IN1 General Industrial and the IN2 Light Industrial zone will become the E4 General Industrial.

These changes will provide a simplified framework for a clear strategic intent for each zone with a significant increase in mandated permitted uses. This change will manage industrial land use conflicts and amenity impacts and the opportunity for diverse businesses to co-locate.

An amendment to the Standard Instrument (Local Environmental Plan) Order will remove the deferral of the Willoughby LEP allowing the translation to the new employment zones to occur at the same time the Comprehensive review amendment is made. An amendment has been prepared and was approved by the Governor at the Executive Meeting on 28 June 2023.

Shop top housing is currently a permissible use in the B5 Business Development but not the B7 Business Park zone. These two zones are to be combined into the E3 Productivity Support zone and shop top housing will not be permissible in this zone.

Council intends to enable shop top housing as a permitted land use on certain sites in the former B5 zone under Schedule 1 Additional Permitted Uses. This continues the current use and was highlighted in the zone translation exhibited with the planning proposal.

The additional permitted use to permit shop top housing for certain E3 Productivity Support zoned land is to be identified on a Special Provisions Area Map (land currently zoned B5). A list of sites to be included as 'Area 3' on the Special Provisions Map is in **Attachment R2**.

Council has made changes to the planning proposal post-exhibition referring to the new zones from business and industrial to employment and in the new land use tables.

3.3.3 Department recommended changes

Following the review of the planning proposal as submitted by Council for finalisation, the Department recommends further changes to the proposal as outlined below and discussed further in section 4.2.

The Department recommended changes are as follows:

- Remove proposed clauses that could slow down or complicate the merit assessment of housing in low density residential areas relating to:
 - gross floor area controls applying to R2 Low Density Residential zones and the C4 Environmental Living zones;
 - landscaped area controls applying to the R2 Low Density Residential zones and the C4 Environmental Living zone; and
 - the prohibition of dual occupancies on battle-axe lots in the R2 zone.
- An additional clause to require the consideration of helicopter flight paths associated with the Royal North Shore Hospital in St Leonards to respond to the submission from NSW Health for certain sites in St Leonards.
- Retain the existing planning controls under Willoughby LEP 2012 for three sites where further consideration is required to satisfy the Section 9.1 direction for Remediation of Contaminated Land. This information may be considered in a subsequent planning proposal to update the LEP. The sites include:
 - 316 Penshurst Street North Willoughby
 - 879 Pacific Highway Chatswood
 - 168-170 Epping Road Lane Cove North (proposed C2 zoned land).
- Retain the existing development controls under Willoughby LEP 2012 for land affected by flooding (described below) where further consideration is required to satisfy the Section 9.1 direction for Flooding. This will allow the consideration of flood advice by council for inclusion of this land in a subsequent planning proposal to update the LEP. The department is also instructing council to update its DCP flooding controls to manage other sites. This is discussed in detail in section 4.1 of this report. The changes relate to:

- the proposed rezoning and uplift to certain areas in Artarmon and Willoughby South Local Centres;
- the intensification of the industrial zoned land at 168-170 Epping Road Lane Cove North.
- The further alignment of the application of the proposed Affordable housing contributions levy with the SGS Feasibility report to ensure that the 4% rate is retained if the FSR uplift does not align with the uplift shown in the feasibility study. This applies to sites in the local centres of Northbridge, North Willoughby and Castlecrag.

These recommended changes have been required as the Department cannot support the proposed amendments that will result in:

- rezoning land where insufficient flooding analysis has been provided;
- rezoning land where insufficient contamination assessment has occurred;
- the application of an affordable housing rate that the feasibility analysis does not support;
- the introduction of new controls that are not consistent with the Standard Instrument and may result in delays in development application assessment.

The Department notes that these post-exhibition changes are justified and consider that they do not require re-exhibition. It is considered that the post-exhibition changes:

- are a reasonable response to comments provided by the public authorities;
- do not alter the intent of the planning proposal and are minor amendments to the planning proposal;
- align with State policies and priorities; and
- allow the opportunity for Council to further consider and provide additional information in a subsequent planning proposal to amend the LEP.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) 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. It also reassesses any potential key impacts associated with the proposal (as modified).

The planning proposal as submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Has been updated to further address Section 9.1 Directions as required and is consistent with all relevant Section 9.1 Directions, subject to the recommendations of this report
- Remains consistent with all relevant SEPPs.

Tables 6 and 7 identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

Table 6 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	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 7 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended amendments to the planning proposal to make it suitable for finalisation.

4.1.1 Section 9.1 Ministerial Directions

Consistency with Section 9.1 Ministerial Directions were addressed by Council at Gateway with conditions of Gateway requiring the planning proposal to be updated further to address Ministerial Directions prior to exhibition.

Council addressed the conditions of the determination and updated the proposal. Where these conditions may not have been adequately addressed at Gateway or exhibition, they are reassessed at finalisation before the making of the plan.

The Section 9.1 directions that required further assessment at Gateway are considered below in the finalisation of the LEP.

Table 8 Section 9.1 Ministerial Directions – consistency assessment

Ministerial Direction	Department Comment
1.13 Implementation of St Leonards and Crows Nest 2036 Plan (previously 7.11)	<p>The objective of this Direction is to ensure development within the St Leonards and Crows Nest Precinct is consistent with the St Leonards and Crows Nest 2036 Plan.</p> <p>The land under the St Leonards Crows Nest Plan 2036 was required to be incorporated into the planning proposal satisfying condition 1(e) and the direction has been adequately addressed satisfying condition (1)(b)(i)(f)(ii) of the Gateway determination.</p>

Ministerial Direction	Department Comment
	<p>The proposed LEP amendments reflect the recommended changes in the St Leonards Crows Nest 2036 Plan and are without variation to the recommended controls in the planning proposal.</p> <p>The Department considers that Council has adequately addressed this Direction.</p>
4.1 Flooding	<p>The objectives of this Direction are to ensure that flood prone land is consistent with the relevant NSW Government policies and manuals. It is also to ensure that any provisions of an LEP applying to flood prone land reflect the conditions and potential impact on and off the subject land.</p> <p>Environment and Heritage Group's (EHG) submission commented that it is not appropriate in consideration of this Direction to defer assessment of this Direction to the DCP.</p> <p>In response to the agency submission, the Department sought independent flooding advice which recommended further investigation to be undertaken for some local centres and to address any flood risk measures to certain sites proposed for sensitive land uses such as residential, childcare and educational.</p> <p>The Department has retained existing planning controls on flood affected land (as specified in section 4.1.2) in the LEP to allow further work to be completed and will direct council to amend its DCP to apply further controls in other areas where the risk can be managed. An amendment is also being finalised to introduce clause 5.22 Special Flood Considerations into the Willoughby LEP 2012, which will specify that no sensitive or critical land uses can occur in flood affected areas without consideration of risk assessment and measures including evacuation.</p> <p>Flooding is addressed in section 4.1.2 and a recommendation in Table 10 and section 6.</p>
4.4 Remediation of Contaminated Land (previously 2.6)	<p>This Direction aims to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered at the planning proposal stage.</p> <p>Condition (1)(b) of the Gateway determination required the planning proposal be updated to address this Direction.</p> <p>Condition 5 was applied to require this direction to be addressed and an assessment of any land to be rezoned from non-residential to residential uses in accordance with the direction.</p> <p>Council noted that many sites being rezoning land from the former B5 Business Development zone to B4 Mixed Use have been subject to separate planning proposals where preliminary site investigations have already been undertaken.</p> <p>To address this direction for the comprehensive planning proposal, Council submitted a Preliminary Site Investigation (PSI) for the carpark site at the junction of Edinburgh Road and The Postern, Castlecrag.</p> <p>Council has identified the remaining former B5 land as the government owned site currently used as the 'dive site' for the Sydney Metro. TfNSW</p>

Ministerial Direction	Department Comment
	<p>provided a site audit for this site on the corner of Pacific Highway and Mowbray Road, Chatswood.</p> <p>Based on the recommendations of the PSIs that the land can be remediated, these sites are considered acceptable to proceed.</p> <p>Further sites requiring investigation to determine their suitability for the intended purpose have been identified as:</p> <ul style="list-style-type: none"> • 879 Pacific Highway, Chatswood which is being rezoned from former B5 Business Development to B4 Mixed Use (MU1); • 168-170 Epping Road Lane Cove North intended to be partially rezoned from IN1 General Industrial to C2 Environmental Conservation; and • 316 Penshurst Street, North Willoughby. <p>As this direction has not been fully addressed prior to finalisation of the plan regarding these sites, they have been removed from the planning proposal to be reconsidered with further investigation.</p> <p>Contaminated land management is also discussed further in section 4.2 and a recommendation in Table 10 and section 6.</p> <p>Refer to Directions 7.1 and Direction 4.2 below for additional information relating to the site at 168-170 Epping Road, Lane Cove North.</p>
5.2 Reserving Land for Public Purposes (previously 6.2)	<p>The objectives of this Direction are to facilitate the provision of public services and facilities by reserving land for public purposes and to facilitate the removal of reservations where the land is no longer required.</p> <p>The planning proposal contains commentary on this Direction stating that the Land Reservation Acquisition (LRA) maps have been updated to add, amend or remove sites.</p> <p>Council has withdrawn the reclassification and rezoning of land known as Northbridge Plaza carpark from the planning proposal as a post-exhibition change. This can be reconsidered at a later date with further public consultation.</p> <p>The Artarmon Bowling Club site and Tyneside Tennis Club courts have been acquired by Council and will be rezoned from RE2 Private Recreation to RE1 Public Recreation.</p> <p>The proposal includes the creation of new and the removal of existing open space reservations. It also adds and removes several land reservations for classified roads and local road widening.</p> <p>The sites to be added for acquisition are:</p> <ul style="list-style-type: none"> • 87 and 89 Fullers Road – (Classified Road) • Waltham Street Artarmon (Classified Road) • Findlay Ave (936 Pacific Highway Roseville – (Classified Road) • Stirling Lane sites – (Local Road widening) • 455, 457 and 459 Penshurst Street (amendment to existing classified road) • Eastern Valley Way (amendment to existing classified road) • 854 Pacific Highway (Classified Road)

Ministerial Direction	Department Comment
	<p>Sites to be removed (as they are no longer needed or have been acquired):</p> <ul style="list-style-type: none"> • 11 Parkes Road – (Local Road widening) • 73 Albert Street, Chatswood – (Local Road widening) • 755-759 Pacific Highway, Chatswood - (Local Road widening) • Thomas Lane site - (Local Road widening) • Kooba Ave sites - (Regional Open Space) • Flat Rock Drive – (Classified Road) • Garland Road site (Regional Open Space) • 69 Edinburgh Road Castlecrag (Classified Road) <p>Land at 316 Penshurst Street, North Willoughby was exhibited to be included on the LRA map for local road widening. This will be removed from the plan as it was intended to be for Regional Open Space and will be progressed in a separate planning proposal.</p> <p>All these sites are shown in Attachment T, including their suitability for inclusion and reason for their removal from the LRA map. This issue is discussed further in section 4.2.</p> <p>The Department considers that Council has now satisfactorily addressed this Direction.</p>
4.2 Coastal Management (previously 2.2)	<p>The Gateway determination required that the planning proposal address Direction 4.2 Coastal Management.</p> <p>Council satisfactorily updated the proposal prior to exhibition to address this direction.</p> <p>However, changes to land affected by this provision have been removed.</p>
7.1 Business and Industrial zones (previously 1.1)	<p>The requirement to address the loss of industrial land under this direction was included in the letter to Council accompanying the Gateway determination.</p> <p>Council intends to rezone industrial land at 168-170 Epping Road, Lane Cove North from IN2 Light Industrial (E4 General Industrial) to E2 Environmental Conservation (C2 Environmental Conservation).</p> <p>Council has stated that a small section of industrial land is to be rezoned to C2 Environmental Conservation at 168-170 Epping Road, Lane Cove North to provide riparian protection between the industrial site and the Lane Cove River but that this will not result in the loss of developable land.</p> <p>The site at 168-170 Epping Road extends over the Willoughby LGA and Lane Cove LGA. Council made a post-exhibition change to the mapping for this land to removes the intended C2 zone which traversed the entire site into the Lane Cove LGA rather than ending at the Willoughby LGA boundary.</p> <p>However, the land at 168-170 Epping Road, has been recommended as a department post-exhibition change to retain its current zoning under the Willoughby LEP 2012 to allow further work to be undertaken to address</p>

Ministerial Direction	Department Comment
	<p>flooding and site contamination. This can be progressed as a separate planning proposal in the future.</p> <p>It is considered that this change now satisfies Direction 7.1 and there is no reduction to employment zoned land.</p>

4.1.2 Flooding impact

Council's assessment provided against the Ministerial Direction for 4.1 Flooding at Gateway determination noted that the planning proposal is considered to be consistent because upzoned land which is identified in any flood studies will be subject to water management controls within the Willoughby DCP.

As outlined in section 3.2, a submission from Environment and Heritage Group raised concern about the consistency assessment with Ministerial Directions 4.1 Flooding as the planning proposal seeks to increase density on land identified as flood prone land.

EHG recommended that Council review the extent of flood prone land to determine where the direction is to be considered and advised that DCP controls cannot be substituted for consideration of the direction at the planning proposal stage.

Council addressed the EHG submission in its post-exhibition report (December 2022) noting that areas are subject to overland flow. Council advised overland flow had been taken into consideration particularly for increases in density in areas such as Artarmon and Willoughby South Local Centres. Council considered that flood constraints identified for specific development lots do not prohibit development of those sites under the existing or proposed LEP controls. Proposed heights and FSRs are maximum controls that allow for design flexibility to respond to site specific constraints. Localised flood constraints will likely involve design compromise for some lots and architectural considerations will need to account for these.

As a result of the EHG agency submission and recent updates made to the NSW Flood-Prone Land Package, the department referred the planning proposal to an independent consultant, Rhelm Pty Ltd for advice on this issue.

Rhelm Pty Ltd provided advice to the Department (**Attachment V**) which assessed the planning proposal and post-exhibition changes, proposed and existing maps and Council's existing published flood studies.

The report notes that the planning proposal includes residential zones, local centres, industrial land, Chatswood CBD and St Leonards and Crows Nest area across the Willoughby LGA and seeks to intensify development and dwelling density on land within the extent of the Probable Maximum Flood (PMF). The recommendations suggest a pathway for finalisation of the planning proposal.

The report provides the following findings and recommendations:

- The planning proposal in its current form is largely acceptable and could be approved as is at this stage, with the exception of the R2 zone changes for flood prone land and several materially flood-affected locations where amendments are required.
- There is some land to which the planning proposal applies which is considered to be materially flood affected (high hazard and/or floodway in the PMF). As a result it is recommended that some land should be excluded from the planning proposal if it is to be finalised in order to satisfy the Ministerial direction.

Details of the flood considerations for the areas where uplift is proposed are provided in the table below.

Table 9 - Flood consideration for areas of uplift

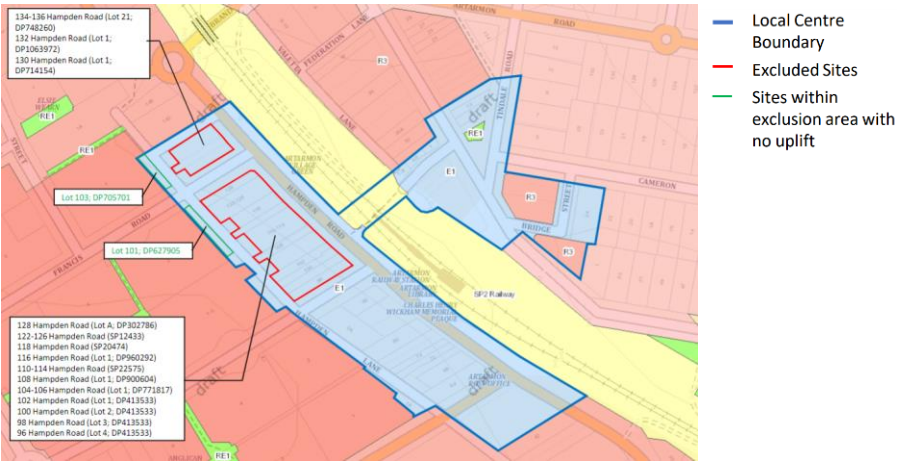
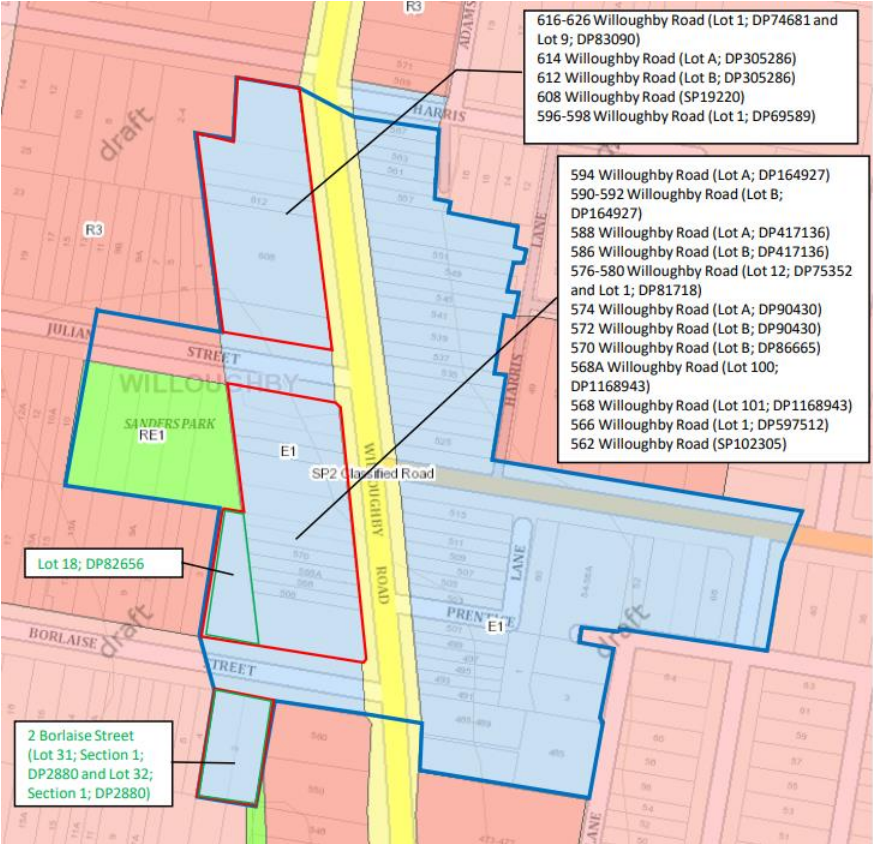




Areas of uplift and flood hazard considerations	Department comment
<p>1. Chatswood CBD</p> <p>The land in Chatswood CBD is proposed to be zoned E2 Commercial Core and MU1 Mixed Use. Changes are proposed to height of buildings, floor space ratio and minimum lot size.</p> <p>The report notes that basement car park flooding issues may potentially result in evacuation issues for the residential flat buildings proposed in MU1 zone in the Chatswood CBD. Council is currently undertaking a Floodplain Risk Management Study and Plan (FRMS&P) for the catchment, which may provide overland flow mapping and further flood information for Chatswood CBD.</p> <p>The report recommends stringent controls should be applied to require as a minimum requirement of the DCP:</p> <ul style="list-style-type: none"> site-specific flood analysis to identify suitable basement entry access points and minimum basement entry threshold/podium levels (ideally set at the FPA or PMF, whichever is the higher); and an assessment of the need for any offset flood detention storage. 	<p>The department notes Rhelm's advice and will require updates to Council's DCP to:</p> <ul style="list-style-type: none"> undertake site-specific flood analysis to identify suitable basement entry access points and minimum basement entry threshold/podium levels; and assessment of the need for any offset flood detention storage. <p>The department's letter to council regarding the finalisation DCP and will continue working to update their flooding plain management documentation.</p>
<p>2. Artarmon Local Centre</p> <p>The land is zoned E1 (former B2) local centre zone. Changes are proposed to height of buildings and floor space ratio.</p> <p>The report notes that:</p> <ul style="list-style-type: none"> the northern portion of the E1 Local Centre (former B2) zone in the vicinity of Hampden Road contains high hazard floodway in the PMF event. Intensification of development should not occur between Barham Lane and Broughton Road. <p>The land outlined in red is recommended to be removed from the planning proposal, to allow further flood risk assessment to be undertaken.</p> 	<p>The department notes Rhelm's advice that intensification of development should be deferred until further flood risk assessment has been undertaken.</p> <p>The flood affected lots are recommended to retain the existing planning controls under WLEP 2012..</p> <p>The translation under the employment zone reforms will still take effect, to update the zone to E1 Local Centre.</p> <p>Council will be required to undertake further investigation to demonstrate that evacuation planning, shelter in place requirements and risk to life has been adequately considered in progressing a subsequent planning proposal for this land.</p>

Figure 5: Artarmon Local Centre – flood affected land to be removed from the planning proposal (source: NSW Spatial Viewer, overlay by the Department).

Areas of uplift and flood hazard considerations	Department comment
<p>3. Willoughby South Local Centre</p> <p>The land is zoned E1 (former B2) local centre zone. Changes are proposed to height of buildings and floor space ratio.</p> <p>The report notes that the area to the west of Willoughby Road contains some high hazard floodway in the PMF event. The roadways surrounding this area contain high hazard floodway in the PMF event (Willoughby Road, Penkivil Street, Julian Street and Hector Road).</p> <p>The land outlined in red is recommended to be removed from the planning proposal, to allow further flood risk assessment to be undertaken.</p>  <p>Figure 6: South Willoughby Local Centre – flood affected land to be removed from the planning proposal (source: NSW Spatial Viewer, overlay by the Department).</p>	<p>The department notes Rhelm's advice that intensification of development should not occur in the area to the west of Willoughby Road, unless Council can demonstrate that evacuation planning, shelter in place requirements and risk to life has been adequately considered in this area.</p> <p>The flood affected lots are recommended to retain the existing planning controls under WLEP 2012.</p> <p>The translation under the employment zone reforms will still take effect, to update the zone to E1 Local Centre.</p> <p>Council will be required to undertake further investigation to demonstrate that evacuation planning, shelter in place requirements and risk to life has been adequately considered in progressing a subsequent planning proposal for this land.</p>
<p>4. Northbridge</p> <p>The zoning of the land and changes to height of buildings and floor space ratio (FSR) were proposed in the exhibited version of the planning proposal for land in Northbridge. Council made a post exhibition change to remove the land from the planning proposal.</p> <p>The Rhelm report recommended that consideration of an SP2 drainage zone be incorporated in the proposed rezoning.</p>	<p>The department notes that the land in Northbridge has been removed by Council as a post exhibition change.</p> <p>Changes to this land have been removed from the planning proposal. Council may consider this recommendation and undertake further flood risk assessment to address this direction in progressing a separate planning proposal.</p>

Areas of uplift and flood hazard considerations	Department comment
 <p>Figure 7 : Northbridge land Source: Rhelm advice (2023 p.6)</p>	
<p>5. St Leonards-Crows Nest</p> <p>Several lots proposed for changes in the St Leonards-Crows Nest area contain or are substantially surrounded by high hazard floodway in the PMF event in R4 High Density Residential and E2 Commercial Core (former B3 areas) zones.</p> <p>The report considers that provided that adequate consideration is given to floor level controls and evacuation planning (which may be shelter in place with podium levels at PMF), the proposed changes in the St Leonards-Crows Nest area can be adequately managed by proposed flood controls in the Willoughby DCP (i.e. generally in accordance with the proposed clauses in Sections 5 and 6).</p>	<p>The department notes Rhelm's advice that flood controls in Council's DCP are adequate.</p>
<p>6. Artarmon Industrial Land</p> <p>The planning proposal will increase the FSR from 1.5:1 to 2:1 in the former IN2 Light Industrial zones for sites greater than 1000 square metres.</p> <p>The report notes that the northernmost areas of the IN2 Light Industrial zoned land is the most materially flood affected, containing high hazard floodway in the PMF event. George Place is the single evacuation road for the area is also materially flood affected.</p> <p>The advice provided is that the intensification of development in this area requires controls to manage the period of isolation. Some form of control that indicates no sensitive or critical land use can occur in this location (such as the imposition of Clause 5.22 in the Standard LEP) is recommended.</p>  <p>Figure 8::Artarmon Industrial Land (source: Rhelm advice (2023 p.7))</p>	<p>The recommended Clause 5.22 Special Flood considerations will be included in the Willoughby LEP through the State Environmental Planning Policy Amendment (Flood Planning) 2023, and which will be brought into effect in July 2023.</p> <p>The department considers that future redevelopment of the former industrial land, will provide the opportunity to improve the existing development and respond to flood impact, including options to shelter in place, and therefore planning control changes are supported to remain in the final LEP.</p> <p>The translation under the employment zone reforms will also take effect, to update the zone to E4 General Industrial</p>
<p>7. East Chatswood Industrial Land</p> <p>The planning proposal will increase the FSR from 1.5:1 to 2:1 in the former IN2 Light Industrial zones for sites greater than 1000 square metres.</p> <p>The report identifies that Scotts Creek runs through the land zoned IN2, and the adjacent lands are a high hazard floodway in the PMF event. However, only flood function and hazard mapping for the 1% AEP event is presented in the Flood Study.</p> <p>The report considers that any intensification of development should not</p>	<p>The recommended Clause 5.22 Special Flood considerations will be included in the Willoughby LEP through the State Environmental Planning Policy Amendment (Flood Planning) 2023, and which will be brought into effect in July 2023.</p>

Areas of uplift and flood hazard considerations	Department comment
<p>occur in the IN2 area indicated as affected by the PMF, as it is highly likely its materially flood affected.</p>  <p>Figure 9: East Chatswood Industrial Land (source: Rhelm advice (2023 p.7))</p>	<p>The department considers that the future redevelopment of the industrial land, will provide the opportunity to improve the existing development and respond to flood impact, including shelter in place, and therefore planning control changes are supported to remain in the final LEP.</p> <p>The translation under the employment zone reforms will also take effect, to update the zone to E4 General Industrial.</p>
<p>8. Lane Cove North Industrial Land</p> <p>The planning proposal will increase the FSR from 1.5:1 to 2:1 in the former IN2 Light Industrial zones for sites greater than 1000 square metres.</p> <p>The majority of the IN2 area to the west of Epping Road contains high hazard floodway in the PMF event. The report considers that intensification of development should not occur in this area as it is materially flood affected.</p>  <p>Figure 10: Lane Cove North Industrial Land (source: Rhelm advice (2023 p.7))</p>	<p>The department notes the Rhelm advice that intensification of development should not occur in the Lane Cove North Industrial Area.</p> <p>This aspect of the planning proposal to increase FSR to 2:1 in this location, has been removed from the planning proposal to allow further flood risk assessment to be undertaken.</p>
<p>9. R2 Low Density Residential zoned land</p> <p>The exhibited planning proposal proposed to replace Floor Space Ratio (FSR) controls with Gross Floor Area controls on R2 zoned land (not in a conservation area). Other residential uses including secondary dwellings are also proposed to be permissible with consent.</p> <p>The report recommended that the more generous floor space controls be excluded from application in flood prone areas. It was also recommended that no secondary dwellings be permitted on flood prone land.</p>	<p>The Department has considered the recommendations of the Rhelm report with regard to changes in density on R2 zoned land.</p> <p>The proposed changes from FSR control to GFA that may have resulted in intensification of residential density, has been removed from the final LEP as a post exhibition change by the Department. This is discussed further in section 4.2.</p> <p>The current FSR controls in R2 areas will be retained.</p> <p>Secondary dwellings are currently permitted with consent under clause 52 of State Environmental Planning Policy (Housing) 2021,</p>

Areas of uplift and flood hazard considerations	Department comment
	<p>on land in a residential zone if development for the purposes of a dwelling house is permitted under another EPI.</p> <p>The LEP is not introducing an intensification of land use in the R2 Low Density Residential Zone and the department recommends that the LEP and DCP controls are sufficient to assessing flood hazards in this zone.</p>
<p>10. Other local centres</p> <p>The Penshurst Street Local Centre is affected by a high hazard floodway in the PMF event on the roadways in the northern portion of the centre, however is not considered a significant constraint to proposed development of the area.</p> <p>North Willoughby, Naremburn and Castlecrag are not identified to be flood-affected.</p>	<p>The remaining local centres are considered acceptable to proceed with regard to this direction.</p>

The Willoughby LEP 2012 contains clause 5.21 Flood planning and the draft DCP contains Part I Stormwater Management to reduce flooding risk in urban areas and maintain public health and safety among other objectives. The DCP refers to Council's various floodplain risk management studies, plans, technical standards and controls that apply to all development on flood affected lands for mainstream and major drainage flooding.

In order to adequately address the 9.1 Direction, the following actions are required:

- The proposed changes to intensify development on identified flood affected land should be excluded from the final LEP including:
 - the northern portion of the Artarmon local centre zoned E1 (former B2) in the vicinity of Hampden Road;
 - the area to the west of Willoughby Road and roadways surrounding Willoughby South local centre (Willoughby Road, Penkivil Street, Julian Street and Hector Road);
 - the IN2 zoned land west of Epping Road in the Lane Cove North Industrial Area.

The sites to be removed from the planning proposal in the Artarmon and Willoughby South Local centres are shown in **Figures 5 and 6** and a list is in **Attachment U1 and U2**.

- Direct Council to revise the DCP to:
 - add a definition of floodway and reference to flood function to ensure clarity on the intent of the LEP provisions particularly to the objectives of clause 5.21;
 - include a minimum requirement for a site-specific flood analysis to identify suitable basement entry access points and minimum basement entry threshold/podium levels (ideally set at the FPA or PMF, whichever is the higher); and an assessment of the need for any offset flood detention storage, particularly for sites in the Chatswood CBD.
- Apply Standard Instrument LEP clause 5.22 Special Flood Considerations which indicates that no sensitive or critical land use can occur in flood affected areas. This will apply across the LGA but in particular to Artarmon and East Chatswood industrial land where the FSR increases from 1.5:1 to 2:1 for sites greater than 1000m².

Council had resolved at its meeting on 3 November 2021, to include clause 5.22 in the LEP. Council stated that: *‘The incorporation of the clause will provide greater transparency in development assessment. It will also provide greater statutory weight in ensuring appropriate development of land subject to potential flood affectation. It provides consistency with industry best practice and will reduce the risk and cost of flooding throughout the LGA’.*

Although recommended as part of the finalisation of this planning proposal, Clause 5.22 Special Flood Considerations will be included in the Willoughby LEP through the State Environmental Planning Policy Amendment (Flood Planning) 2023, which will be brought into effect in July 2023.

4.1.3 Contamination Impact

Condition 1(b)(i)(f)(i) of the Gateway determination required that Ministerial Direction 2.6 Remediation of contaminated land (now 4.4) be addressed.

Council has identified 3 sites that are to be rezoned that require Preliminary Site Investigations:

Public car park at junction of Edinburgh Rd/The Postern Castlecrag

The PSI (**Attachment N1**) recommended:

- the site is currently suitable for use as a car park under the current zoning B1 – Neighbourhood Centre;
- the site is likely to be suitable for rezoning as a Recreational area (RE1 – Public open space); however, subject to the development plans, testing of the shallow soils should be undertaken to characterise the underlying soils and verify that the site is suitable for use (in terms of ecological risk to sensitive planting - if used - and to validate any area where soil/dust ingestion and skin contact is more likely, for example, a play area; and
- an unexpected finds protocol be prepared for any intrusive works or development at the site.

The PSI recommendations are suitable to allow the site to proceed to rezoning with further work that the DA stage to address contamination.

Metro Dive site – Corner of Pacific Highway and Mowbray Road Chatswood

Contamination assessments were previously carried out on behalf of TfNSW as part of the construction of the Chatswood section of the Metro line. TfNSW has supplied a Site Audit (SA) which determined that the site could be made suitable for unrestricted land use if the site is remediated or managed in accordance with the remedial action plan.

316 Penshurst Street, North Willoughby

A PSI was submitted to inform the rezoning of the site which is currently zoned B2 Local Centre and used as a service station. The report notes that detailed site investigation is required to properly qualify the contamination risk.

The PSI concluded that based on the findings of the investigation, and uncertainties on current contamination status, the land is contaminated and unsuitable for a future B2 and RE1 Public Recreation zoning. However, the land can be made suitable after further investigation and remediation.

Council has advised that this site should be removed from the plan and revert to existing planning controls, subject to further investigation for site contamination.

The department recommends a post exhibition change that the Local Centres Strategy not be implemented for this site and the site be removed from the LRA map (**Figures 11 to 13**). This will allow for further site contamination investigation and may be progressed in a separate planning proposal.

Additionally, an error on the exhibited Land Reservation Acquisition Map was identified which indicated the site was to be acquired as a road reservation rather than for local open space. As a result this would be required to be re-exhibited and could proceed in a separate planning proposal.

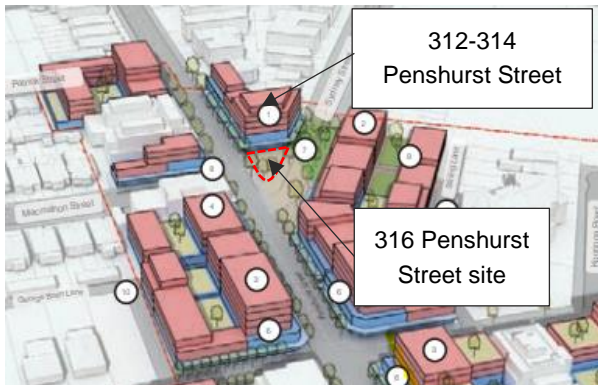


Figure 11: Proposed increase in development standards in the North Willoughby Local Centre (source: Council)

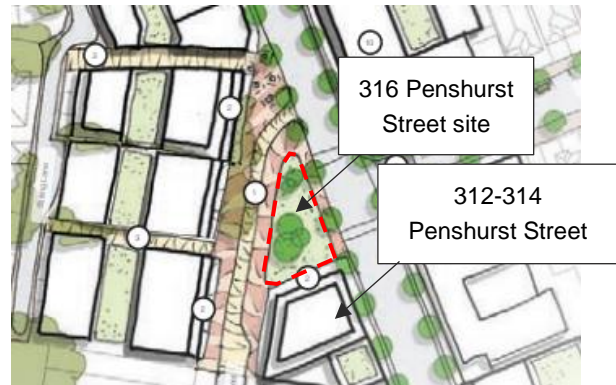


Figure 12: Public open space in the North Willoughby Local Centre at 316 Penshurst Street, North Willoughby (source: Council)



Figure 13: The site will be removed from the proposed LRA map (source: Council)

The following sites were not identified by Council as requiring PSIs:

879 Pacific Highway, Chatswood

The exhibited planning proposal intended to rezone the site at 879 Pacific Highway, Chatswood from B5 Business Development to B4 Mixed Use (now MU1), consistent with the recommendations in the Chatswood CBD Strategy.

This site is partially used as a service station and is adjacent to the rail corridor (**Figures 14 and 15**). The site is to be rezoned to B4 (MU1) which permits sensitive land uses such as residential uses, centre-based childcare and educational facilities.

It is noted that the adjoining site immediately to the south at 871-877 Pacific Highway was rezoned from B5 to B4 in 2022 through a site-specific planning proposal. Potential contamination concerns were raised in a Detailed Site Investigation (DSI), partly due to the proximity to the service station on 879 Pacific Highway.

According to the terms of Direction 4.4 Remediation of contaminated land, if the site is to be rezoned to permit these sensitive land uses, even though shop top housing is permitted in the existing zone, a PSI will be required prior to the plan being made. A PSI has not been submitted for this land. It is recommended that one be submitted prior to rezoning to determine if it is suitable for the intended use.



Figure 14: 879 Pacific Highway, Chatswood currently zoned B5 (E3) (source: NSW Spatial Viewer)



Figure 15: 879 Pacific Highway is used for a service station (source: Google maps)

168-170 Epping Road, Lane Cove North

This land is proposed to be rezoned from IN2 to C2 (**Figures 16 and 17**). A PSI has not been submitted for this land. As the land is proposed to be rezoned from an industrial use to a environmental conservation use for the purposes of a foreshore walkway to allow public access, it is considered that direction 4.4 applies and should be addressed with regard to consideration of contaminated land as a result of the proposed rezoning. It is recommended that further investigation is required prior to rezoning to determine if it is suitable for the intended use.

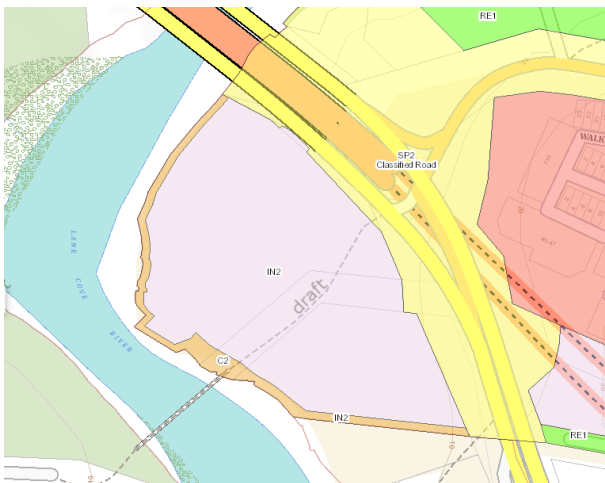


Figure 16: Original proposal to rezone land along the Lane Cove River from IN2 to C2 at Lane Cove North Industrial Area - rezone section of land (source: Council).

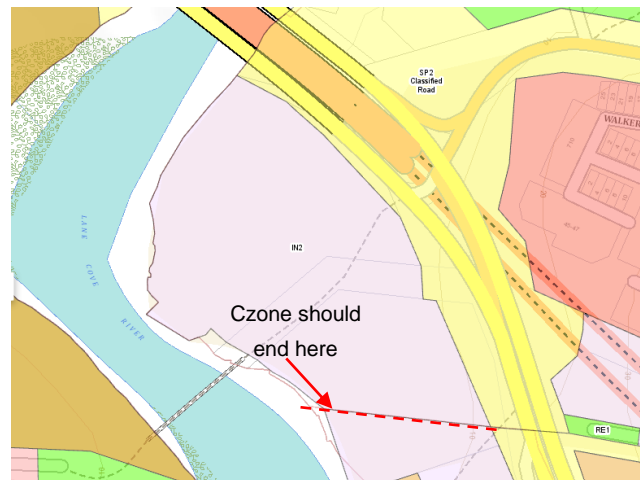


Figure 17: This will be removed from the final LEP to be considered with further investigation. Proposed C2 zone should terminate at the Willoughby LGA boundary. This lot extends into the Lane Cove LGA to the south (source: Council).

The Department recommends that the sites at 879 Pacific Highway, Chatswood and 168-170 Epping Road, Lane Cove North be removed from the planning proposal. Rezoning of the land can be considered as part of a future planning proposal following further investigation. The land at 879 Pacific Highway, Chatswood is also addressed in **Table 8** and a recommendation for 879 Pacific Highway and 168-170 Epping Road, Lane Cove in **Table 11** and section 6.

4.1.4 Implementation of St Leonards and Crows Nest 2036 Plan

The St Leonards and Crows Nest 2036 Plan finalised by the Department in August 2020, was accompanied by a Ministerial Direction 1.13 to ensure planning proposal are consistent with the SLCN 2036 Plan. The planning proposal implements the recommendations of the SCLN 2036 Plan and applies uplift in height and FSR to sites recommended for change in the Willoughby LGA.

A post-exhibition change was recommended by Council, to respond to submissions, for the maximum building height at 207 Pacific Highway to be increased from 77m to 83m in order to accommodate a 25 storey commercial building consistent with the SLCN 2036 Plan. This change considered increased in floor-to-floor heights from 3.1m to 3.3m would be a more accurate translation of the heights from the storeys indicated in the SLCN 2036 Plan.

Urbis, on behalf of the owners for 207 Pacific Highway also requested that the Department review Council's proposed revised height of 83m. Urbis advised that the 3.3m floor-to-floor height will not be adequate to achieve sufficient daylight access and would not provide the required space for mechanical equipment. To facilitate 25 storeys of A-grade office space, Urbis considers the height would need to be 104.6m to accommodate at least a floor-to-floor height of 3.8m plus height for lift overrun/plant. The 3.8m height would include 2.7m ceiling heights plus 900mm for services and 200mm for the structural slab.

Department Comment

The suggested height increase for 207 Pacific Highway to 104.6m is not supported as the increase in height from the exhibited 77m to 104.6m post exhibition would be a substantial variation from the planning proposal as exhibited.

The Department considers Council's post-exhibition amendment aligns the heights with the SLCN recommended height of 25 storeys and is a more accurate estimation of floor-to-floor heights.

A site-specific planning proposal could be considered in the future that would need to justify additional height consistent with the direction for the SLCN 2036 plan.

4.1.4 Social and economic impact

The planning proposal seeks to ensure that consideration is given to the social, economic, health and wellbeing of residents and visitors in the future development and growth of Willoughby.

The planning proposal will increase employment floor space close to existing and new public transport options and services. This will provide greater certainty to the community as the increase in residential density will be in and around identified centres preserving lower density areas.

This will result in increased jobs and housing choice allowing people to live and work in the local community while ensuring greater amenity and a healthier built environment.

Affordable Housing

The Willoughby LSPS sets a baseline of 4% of GFA with housing uplift as affordable housing, with a target increase to 7%-10% with new housing uplift by 2036. The proposed increase to the affordable housing contribution will enable more key workers to live close to jobs, transport and services in line with the priorities of the Greater Sydney Region Plan and North District Plan.

The current contribution rate for affordable housing is 4% of accountable total floorspace, applying to development in the Chatswood CBD and certain local centres under clause 6.8 Affordable housing of the LEP. Council intended to increase this current contribution rate for new developments in other areas of the LGA through the planning proposal.

The feasibility study (**Attachment M**) submitted with the planning proposal found that the increase to 10% may not be viable in all centres. Submissions during the public exhibition also raised concerns that development outcomes will be impacted by the viability and the cost of housing.

The increase to the affordable housing contribution was generally supported but residents who made submissions wanted more detail with its management and implementation.

As a result of the feedback during the public exhibition and the recommendations of the submissions report (**Attachment D1**), Council resolved to apply the affordable housing contribution consistent with the figures in the feasibility study (**Table 10**).

The submissions report recommended the rewording of the affordable housing clause as it had not been amended since 1999 and changes to apply the FSR calculation to internal residential floor space.

The planning proposal will amend clause 4.4 Floor space ratio so that affordable housing is included as part of the gross floor area (GFA) of the building for determining the maximum floor space ratio.

Council has introduced a new Affordable Housing Map transferring the application of affordable housing from the Special Provisions Map.

A saving provision has been introduced for negotiated planning proposals lodged before the exhibition of the Comprehensive LEP Review amendment to apply the Affordable Housing contribution rate of 4%. A list of these proposals is at **Attachment E**.

A recommendation for the Affordable Housing is in **Table 11** and section 6.

Table 10 Recommended affordable housing contributions

Centre	Affordable Housing Contribution
Chatswood	10% (Area 3)
North Willoughby	10% (Area 3)
Northbridge	10% (Area 3)
Castlecrag	10% (Area 3)
Artarmon	7% (Area 2)
Naremburn	4% (no change) (Area 1)
Penshurst Street	4% (no change) (Area 1)
Willoughby South	4% (no change) (Area 1)

Aligning affordable housing with feasibility in local centres

For certain sites in Northbridge, North Willoughby and Castlecrag an affordable housing contribution rate of 10% was exhibited and remained unchanged post exhibition. The Feasibility Study supported a 10% contribution, but only if height and floor space ratios were increased on those sites.

A landowner from a site in Northbridge noted that their property did not receive a FSR increase but was subject to a 10% contribution, this was the case for many other sites across the local centres.

The Department requested that Council provide data where a 10% affordable housing rate was applied and the FSR was not increased.

Council officers reviewed that Affordable Housing Contribution rate of 10% applied in the local centres of Northbridge, North Willoughby and Castlecrag and advised that the rate should be

consistent with the recommendations in the Feasibility Report. As a result Council advised the Department it supported a change to update some sites that have not received an increase in FSR to have a rate of 4% applied instead of 10%.

Department comment

The Department has made a post-exhibition change to apply a 4% contribution, consistent with the feasibility study advice for sites where properties did not receive and FSR increase in the local centres of Northbridge, North Willoughby and Castlecrag.

This is recommended as a post exhibition change and is outlined in the section on Affordable Housing Contribution Rates in **Table 11** and section 6.

Two site specific planning proposals not supported to remain at 4%

- 691-699 Pacific Highway, Chatswood; and
- 2 Day Street, 3 McIntosh Street and 40-42 Anderson Street, Chatswood

The Department has received correspondence for the proponents of these sites raising concerns with the application of an affordable housing contribution rate of 10% instead of 4%.

The planning proposal at 691-699 Pacific Highway (PP-2022-4052) was not included on Council's resolution in the list of proposals that were sufficiently advanced to apply the 4% contribution rate.

It is Council's position that previously negotiated planning proposals lodged before the exhibition of the Comprehensive LEP review would be subject to the 4% affordable housing contribution rate and this proposal will be subject to the new 10% affordable housing contribution rate.

The planning proposal at 2 Day Street, 3 McIntosh Street and 40-42 Anderson Street (PP-2022-4316) is in a similar situation to the planning proposal at 691-699 Pacific Highway. Council has the same position on this planning proposal and it will be subject to a 10% affordable housing contribution rate.

4.1.5 Infrastructure

Public transport

The Willoughby LGA is well serviced by public transport. Transport services such as those to and from local centres can be further assessed as part of any future planning proposal and DA.

Council's Integrated Transport Strategy (**Attachment L**) is a framework of movement and is reviewed annually. Council states it will complete Movement and Place (M+P) Plans for its CBDs (Chatswood and St Leonards) and local centres.

Council is currently piloting its first Movement and Place Plan for Victoria Avenue, Chatswood, with a view to applying the concept across a range of other plans and projects. Transport planning will move away from individual modes and focus on delivering flexible, integrated solutions for customers and the broader community.

Utilities and services

Sydney Water indicated that amplifications or extensions to networks may be required. Council has provided annual growth data to Sydney Water to aid in the planning and coordination of works for continued supply and alleviate road disruptions. Ausgrid did not provide comments on the proposal.

Further assessment of the availability of utilities and services can be undertaken as part of any future planning proposals and DAs.

Educational establishments

The planning proposal intends to rezone school sites in the LGA to SP2 Infrastructure (Educational Establishment) to reflect their current primary use. School Infrastructure NSW (SINSW) stated in

their submission that they are supportive of the proposal to rezone the school sites to SP2 (**Table 4**).

4.1.6 Environmental impact

The planning proposal states that the future development on the site will incorporate energy and sustainable design measures as well as supporting the use of public and active transport.

The changes are within existing urban areas and will not have any additional impact on the environment.

4.1.6.1 Traffic and Transport Impact

The planning proposal was referred to TfNSW who raised no objection to the planning proposal. TfNSW stated that all road reservations are to be conserved and identified on the relevant maps. TfNSW response is in **Table 4** in section 3.2. Further assessment of the LRA is in section 4.1 above.

In endorsing (**Attachment F1**) the Chatswood CBD Strategy the Department's required that *'Council in collaboration with Arup and Transport for NSW is to continue to progress its traffic and transport study. Any recommendations of this study are to be finalised prior to and incorporated within any amended or final Chatswood CBD Strategy'*.

Arup's Future Conditions Report (**Attachment D6**) found that the impact of the Chatswood CBD Strategy can be accommodated on the future transport network with measures to further support the growth for the Chatswood CBD.

Council's Integrated Transport Strategy (**Attachment L**) responds to the Future Conditions Report and contains actions for achieving the goals in the short, medium and long term. Reviews will be undertaken annually and there will be a major review in 2025 to respond to changes in population needs and new technology.

The Transport Strategy identifies that growth will focus on the Chatswood CBD and to a lesser degree, other local centres. The Transport Strategy initiatives include but not limited to:

- undertake a review of both on and off-street parking rates within the Chatswood CBD; and
- review car parking, bicycle parking and end-of-trip facilities to encourage sustainable transport.

Any future planning proposals and development applications (DAs) will be individually assessed for their impact on the surrounding road network.

4.1.6.2 Heritage Impact

The planning proposal intends to list two new heritage items and include minor amendments in the descriptions and mapping for others.

256 Victoria Avenue, Chatswood

The heritage map currently covers a larger area including local heritage item I133 at 256 Victoria Avenue, Chatswood.

The Department notes that development has occurred adjacent to the local heritage item I133 at 256 Victoria Avenue and the heritage map should be amended to just map the local item.

Schedule 5 of the LEP identifies 256 Victoria Avenue as being part Lot 1 DP 828606. The LEP will be updated to indicate that this site is Lot 1 DP 1234620.

Department comment

The Department supports amendment to the extent of the local heritage item.

Artarmon Bowling Club

Council's resolved to include the Artarmon Bowling Club, the bowling green, club house and surrounding landscaping as a local heritage item in Schedule 5 of the LEP (**Attachment O1 and O2**). The site will also be rezoned from RE2 Private Recreation to RE1 Public Recreation.

An independent review recommended that the Artarmon Bowling Club be listed as an item of local heritage significance as it found that it met at least one of the criteria in the NSW Heritage Guidelines.

The recommendation for heritage listing does not prevent the adaption and/or modification of the clubhouse building.

Department comment

The Department supports the heritage listing of the local item in Schedule 5 of the LEP.

Griffin Centre

The planning proposal was accompanied by a nomination to list the site known as the 'Griffin Centre' shops located at 120 Edinburgh Road, Castlecrag as a local heritage item.

Department comment

The report (**Attachment O3**) does not provide an assessment against the 7 criteria for determining heritage significance as outlined in the NSW Heritage Office Guidelines.

The nomination does provide a statement of significance indicating that the site meets at least 3 of the criteria for local heritage listing. However, in the Department's indicative assessment, the site was found to have met at least 4 of the criteria. For a site to be considered for heritage listing, only one of the criteria requires to be met. As such, the Department supports the heritage listing of the local item in Schedule 5 of the LEP.

233 and 233A Edinburgh Road, Castlecrag

Amendments to the description and map are being made to add 233 Edinburgh Road as the heritage item extends over the property boundary.

Department comment

The Department supports amendment to the extent of the local heritage item.

4.1.6.3 Sun Access Protection

The Chatswood CBD Strategy identifies areas that are subject to the sun access provisions. Council proposes a new Sun Access clause to protect key public open spaces from overshadowing.

The exhibited Planning Proposal includes a copy of the sun access map from the Chatswood CBD strategy

As outlined in section 3.3.1 **Table 5**, post-exhibition amendments were made to include Chatswood Oval as an area requiring protection.

To provide clarity and support this clause, a Sun Access Protection map is to be introduced. The map is at **Attachment W**. This map shows the location of public open space that is not to be overshadowed between certain times and supports the new Sun Access protection clause in the LEP. This means that the maximum height may not be able to be achieved.

4.1.6.4 Urban Heat

Council proposes the introduction of an urban heat clause to encourage the reduction of urban heat and maintain and increase the wellbeing of the community.

The planning proposal was updated according to Gateway condition 1(m) requiring Council to align the proposed urban heat clause to the provisions in the Cumberland LEP 2021 and remove

reference to the proposed definitions of ‘urban heat’ and ‘urban heat island effect’. No changes were made post exhibition to the proposed urban heat provisions.

4.1.6.5 Landscaped Areas

Council intended to transfer the provisions for landscaping from the DCP to the LEP. This would have been introduced in a new clause to support another proposed new clause to transfer the FSR of the R2 Low Density Residential zone land that was not in a HCA to a gross floor area clause consistent with the Code SEPP.

Council has made minor amendments to strengthen the wording of the new clause post-exhibition.

The Department does not support landscaping provisions in the LEP due to potential DA processing timeframe increases. The Department’s recommendation concerning the introduction of a new landscaping clause is in **Table 11** and section 6.

4.2 Department’s recommended changes

Table 11 Department’s key post-exhibition changes

Issue	Comment	Recommendation
Affordable Housing contribution rates	<ul style="list-style-type: none"> Submissions raise issues with the rate applied at 10% with no uplift in FSR. Savings Clause – Proponents requesting Planning Proposals be saved if lodged before plan made. Council resolved to save the 4% rate for certain listed sites with a separate Planning Proposal and agreed by Council. 	<ul style="list-style-type: none"> Council made a post exhibition change to align the rate with the recommendations in the feasibility study (as required by a condition of the Gateway). Department supports this change. Submissions raised a mismatch - no FSR uplift and 10% rate applied. Post exhibition change could result in the lower rate being applied where the FSR doesn’t align with the uplift shown in feasibility study. Council have agreed to reduce the rate to 4% where FSR has not been increased to 2.8:1 in the local centres of Northbridge, North Willoughby and Castlecrag. No post exhibition change is proposed to the savings clause. Council’s listed sites have been adopted. <p>Affordable Housing is also addressed in section 4.1 with the recommendation in section 6.</p>
Site Contamination (compliance with direction 4.4 required prior to finalisation).	<p>Site contamination assessed as suitable to proceed to rezoning. PSIs submitted for 3 sites.</p> <ul style="list-style-type: none"> Public car park at junction of Edinburgh Rd/The Postern Castlecrag 	<ul style="list-style-type: none"> It is recommended to not proceed with the rezoning of the service station site at 316 Penshurst Street North Willoughby. The PSI advises that the site may be suitable for rezoning with further investigation to confirm level of contamination and the remediation required. This site

Issue	Comment	Recommendation
	<ul style="list-style-type: none"> • Metro Dive Site (corner Mowbray Road and Pacific Highway, Chatswood); and • 316 Penshurst Street North Willoughby (proposed to rezone from B2 Local Centre to RE1 Public Recreation) <p>No PSI submitted for:</p> <ul style="list-style-type: none"> • 879 Pacific Highway, Chatswood (being rezoned from B5 to MU1) (Figures 14 and 15) • 168-170 Epping Road Lane Cove North (Foreshore land zoned IN2 (E3) industrial land) (Figures 16 and 17). 	<p>has an additional issue regarding land reservation of site for RE1. Council has advised that they will not proceed with the rezoning and retain the existing planning provisions. This site will also be removed from the LRA map.</p> <ul style="list-style-type: none"> • Where no PSI has been undertaken, it is recommended these sites not be rezoned. The sites at 879 Pacific Highway, Chatswood and the land at 168-170 Epping Road, Lane Cove North can be considered at a future date after further investigation has been carried out. <p>Site contamination is also addressed in section 4.1 with the recommendation in section 6. Further discussion of the Ministerial directions is in Table 8.</p>
Flooding	<p>In response to EHG's submission (Table 4) about the assessment against Ministerial Direction 4.1 Flooding. The planning proposal was referred to an independent review to consider potential flooding issues.</p> <p>The report considers that intensification of development should not occur in certain areas unless Council can demonstrate that evacuation planning, shelter in place requirements and risk to life has been adequately considered. Intensification of development on sites in certain flood affected areas should be removed from the planning proposal until further flood risk assessment has been undertaken.</p>	<p>The Department recommended the following post-exhibition changes:</p> <ul style="list-style-type: none"> • Chatswood CBD - require Council to update the DCP to require site specific flooding analysis to consider basement parking entry/exits and flood detention storage. • Local Centres - remove land affected by flooding in Artarmon and Willoughby South to allow Council to undertake further work. • Industrial zoned land - include Clause 5.22 (SI clause) to indicate no sensitive or critical land use can occur in this location; exclude from the plan the intensification of floor space in the Lane Cove North industrial area & remove land west of Epping Road. • Other DCP updates are also needed including adding definitions of floodway, reference to flood function and ensure clarity on the LEP provisions particularly a sufficient link to the objectives of clause 5.21 Flooding. <p>A list of flood affected sites is at Attachment U1 and U2.</p>

Issue	Comment	Recommendation
		Further discussion on the Directions is in Table 8 .
Gross Floor Area replacing Floor Space Ratio for the R2 Low Density Residential zone (not in a HCA)	<p>Council is seeking to apply a maximum GFA rather than apply a FSR to align to the controls in the Codes SEPP for sites in the R2 zone (not in a HCA).</p> <p>The calculation of GFA may be more difficult than the application of FSR.</p> <p>This may create issues for landowners:</p> <ul style="list-style-type: none"> • by increasing DA assessment timeframes; • non-compliance would result in referral to the Local Planning Panel further increasing assessment timeframes; and • by increasing red tape for DAs. 	It is recommended that a post-exhibition change be made to revert to the existing planning provisions for the R2 zone and retain the FSR. Additionally, the supporting landscaping clause is also be removed.
Landscaping clause	<p>Council proposed to complement the application of the GFA in the R2 zone (not in a HCA) by transferring the landscaping controls for the R2 and C4 zones from the DCP into the LEP. The Codes SEPP landscaping controls result in a smaller landscaped outcome.</p> <p>This may create issues for landowners:</p> <ul style="list-style-type: none"> • by increasing DA assessment timeframes; • non-compliance would result in referral to the Local Planning Panel further increasing assessment timeframes; and • by increasing red tape for DAs. 	<p>The Department does not support the introduction of the landscaping controls into the LEP.</p> <p>It is recommended that these controls remain in the DCP.</p> <p>Elevating the controls into the LEP would create the risk of clause 4.6 variations being needed for existing non-compliances and there may need referral to the local planning panel if they are not with officer delegation to approve.</p> <p>Any proposed changes to DA processing timeframes in light of the current housing crisis are not supported.</p> <p>This change was also intended to support minor GFA increases from amendment to the R2 and C4 zones that have been removed from the final plan.</p>
Prohibition of Dual Occupancy subdivision – battle axe lots	Submissions stated that dual occupancies on large lots should not be prohibited. In an assessment of lots over 900m ² , Council determined that 387 lots in R2 zone and 154 lots in C4 zone could be developed with detached dual occupancies. Over the past 5 years, Council has received 42 DAs for dual occupancy with 6 for battle axe lots (2 approved, 3 refused and 1 withdrawn).	<p>The Department does not support a blanket prohibition of this type of dual occupancy.</p> <p>Due to the small number of DAs, the Department has determined that a post exhibition amendment is required to allow a merit assessment for dual occupancy in the battle-axe configuration rather than prohibit.</p>

Issue	Comment	Recommendation
	An alteration of the Gateway determination (Attachment C) removed the requirement for Council to prohibit dual occupancies in the battle-axe configuration. However, the letter to Council which accompanied the alteration noted this would be subject to further consideration at finalisation.	Retain 900m ² minimum lot size currently in LEP and associated controls.
Helicopter flight path	<p>NSW Health's submission raised concern with the increase heights in St Leonards and Crows Nest 2036 Plan area and the possible impact on the helicopter flight path in and around the RNSH.</p> <p>Only 3 sites in the Willoughby LGA in St Leonards are to implement the SLCN 2036 Plan with an increase to the maximum height controls above the existing height or height controls:</p> <ul style="list-style-type: none"> • 207 Pacific Highway; • 2-10 Chandos Street; and • 110-120 Christie Street. 	<p>The Department recommends the inclusion of a local clause to require the consent authority to be satisfied that development does not present a hazard to the helicopter flight path at DA stage. NSW Health, in consultation with NSW Ambulance raise no objection to this approach.</p> <p>The local clause will apply to 3 sites to be identified in the clause by their Lot and DP number.</p>

4.3 Parliamentary Counsel changes

Updates to the LEP have been made by Parliamentary Counsel as part of the legal drafting of the instrument. Minor updates have been made that reflect stylistic changes and drafting conventions that do not affect the intent of the exhibited planning proposal.

Mapping amendments on the spatial viewer have also been made to ensure the mapping accurately reflects the intent of the exhibited proposal and post exhibition changes and introduces new maps for sun access protection in the Chatswood CBD (**Attachment W**) and an affordable housing map.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 12 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Council has transitioned to digital mapping. Maps have been prepared by Council and reviewed by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	<p>Council officers were consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>The Department considered the draft plan addressed the updates requested by Council and requested an opinion that the draft plan may be legally made.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 29/06/2023 , 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 Acting Executive Director, as delegate of the Secretary:

- Agree that the draft LEP is consistent with section 9.1 Directions 4.1 Flooding and 4.4 Remediation of contaminated land following the removal of land where further investigation is required.

It is recommended that the Acting Executive Director, as the Minister's delegate as the local plan making authority, determine to make the LEP, under clause 3.36 (2)(a) with variation of the proposal submitted by Council, as follows:

- remove the proposed new provisions/clauses relating to:
 - the change from FSR provisions to GFA in the R2 Low Density Residential zone (not in a HCA) and C4 Environmental Living zone and ensure the existing FSR controls and mapping are retained;
 - the landscaping clause in the R2 Low Density Residential and C4 zone;
- to ensure consistency with Ministerial Direction 4.1 Flooding:
 - retain the planning controls in the Willoughby LEP 2012 for the sites identified to be on flood affected land in the local centres to be considered in a future planning proposal with further investigation including:
 - mapped areas in Artarmon and Willoughby South local centres; and
 - Lane Cove North Industrial Area

The changes for translation to employment zones will still take effect for this land.

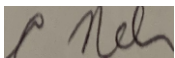
- to ensure consistency with Ministerial Direction 4.4 Remediation of contaminated land retain the planning controls in the Willoughby LEP 2012 for the land at:
 - 879 Pacific Highway, Chatswood to be reconsidered in a future planning proposal with further investigation;
 - 316 Penshurst Street, North Willoughby to be reconsidered in a future planning proposal with further investigation and remove from the LRA map; and
 - 168-170 Epping Road, Lane Cove North to be reconsidered in a future planning proposal with further investigation.

The changes for translation to employment zones will still take effect for this land.

- dual occupancies on battle-axe lots be permitted with consent on lots greater than 900m²;
- further align the affordable housing contribution rates with the recommendations in the Feasibility Study which recommended a 10% rate for sites where an uplift of FSR of 2.8:1 is proposed in the local centres of Northbridge, North Willoughby and Castlecrag;
- the inclusion of a clause in Part 6 of the LEP to provide protection of helicopter airspace in and around the RNSH;
- Direct Council to make the following changes to its DCP to address issues arising from Amendment 34 as follows:
 - require site-specific flood analysis to consider basement parking entry/exits ideally set at the Food Planning Area (FPA) or Probable Maximum flood (PMF) and an assessment of the need for offset flood detention storage; and
 - include a definition of floodways and reference to flood function to provide clarity on the intent of LEP provisions, particularly a sufficient link to the objectives of clause 5.21 Flood Planning.
 - to retain appropriate landscaping controls to ensure these controls are provided within Council's planning framework.

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 merit being consistent with North District Plan and the Willoughby City LSPS and Chatswood CBD Plan and other local strategic plans;
- the inconsistency with section 9.1 Ministerial Directions 4.1 Flooding, 4.4 Remediation of Contaminated Land and 7.1 Business and Industrial Zones has been resolved;
- it is consistent with all other section 9.1 Ministerial Directions and State Environmental Planning Policies;
- it is consistent with the Gateway Determination; and
- issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



28.06.2023

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Manager, Place and Infrastructure, Metro North



28.06.2023

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Director, Metro North



29.06.2023

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Attachments

Attachment	Document
A	Exhibited Planning Proposal
B1	Gateway Determination – 24 December 2021
B2	Gateway Determination Report
C	Gateway Alteration – 15 March 2022
D1	Council – Post Exhibition Report
D2	Council – Minutes Council Meeting – 12 December 2022
D3	Council – Table of Written Changes – Post-exhibition
D4	Council – Table of Mapping Changes – Post-exhibition
D5	Council – Summary of submissions
D6	Council – Future Conditions Report
D7	Council - Letter to DPE requesting to finalise
D8	Employment Zone Reform – Willoughby Zone Translation
E	Site Specific Planning Proposals
F1	Chatswood CBD Partial Endorsement
F2	Chatswood CBD Full Endorsement
F3	Chatswood CBD Planning and Urban Design Strategy 2036

Attachment	Document
G	St Leonards Crows Nest 2036 Plan
H	Willoughby LSPS
I	Willoughby LHS
J	Willoughby Local Centre Strategy
K	Willoughby Industrial Lands Strategy
L	Willoughby Integrated Transport Strategy
M	Affordable Housing Feasibility Report
N1	PSI – Edinburgh Road
N2	PSI – Penshurst Road
N3	Site Audit – Sydney Metro Dive Site Chatswood
O1	Council Resolution Artarmon Bowling Club
O2	Artarmon Bowling Club Heritage Nomination
O3	Griffin Centre Nomination
P	Summary – Willoughby LEP Gateway Determination Conditions
Q	Explanation of Provisions
R1	List - Former B5 Sites Requiring an Additional Permitted Use for Shop top Housing
R2	Map - Former B5 Sites Requiring an Additional Permitted Use for Shop top Housing
S	List - sites with a Revised Affordable Housing Contribution Rate
T	LRA Map Review
U	Flood Affected Sites in Local Centres to be Removed from the Planning Proposal
V	Rhelm Revised Flooding Advice – 19 June 2023
W	Draft Sun Access Map