

## Planning and Assessment

IRF20/2592

### Plan finalisation report

**Local government area:** Yass Valley

#### 1. NAME OF DRAFT LEPS

Yass Valley Local Environmental Plan (Parkwood) 2020

Yass Valley Local Environmental Plan 2013 (Amendment No 9)

#### 2. BACKGROUND

The Ginninderry project consists of a proposed cross border community located in New South Wales (NSW) and the Australian Capital Territory (ACT). The location of the Ginninderry project and Parkwood is shown in Figure 1. The Ginninderry project seeks to develop the 1,600ha site into a master-planned community comprising 11,500 dwellings and 596 ha of conservation corridor.

Planning proposal PP\_2015\_YASSV\_001\_03 (Parkwood) is the NSW component of the Ginninderry project. The NSW development will be staged over 35-40 years and is part of a joint venture between the ACT Government and Riverview Developments Pty Ltd.

Figure 1 Site Location (Source: Parkwood Planning Proposal)

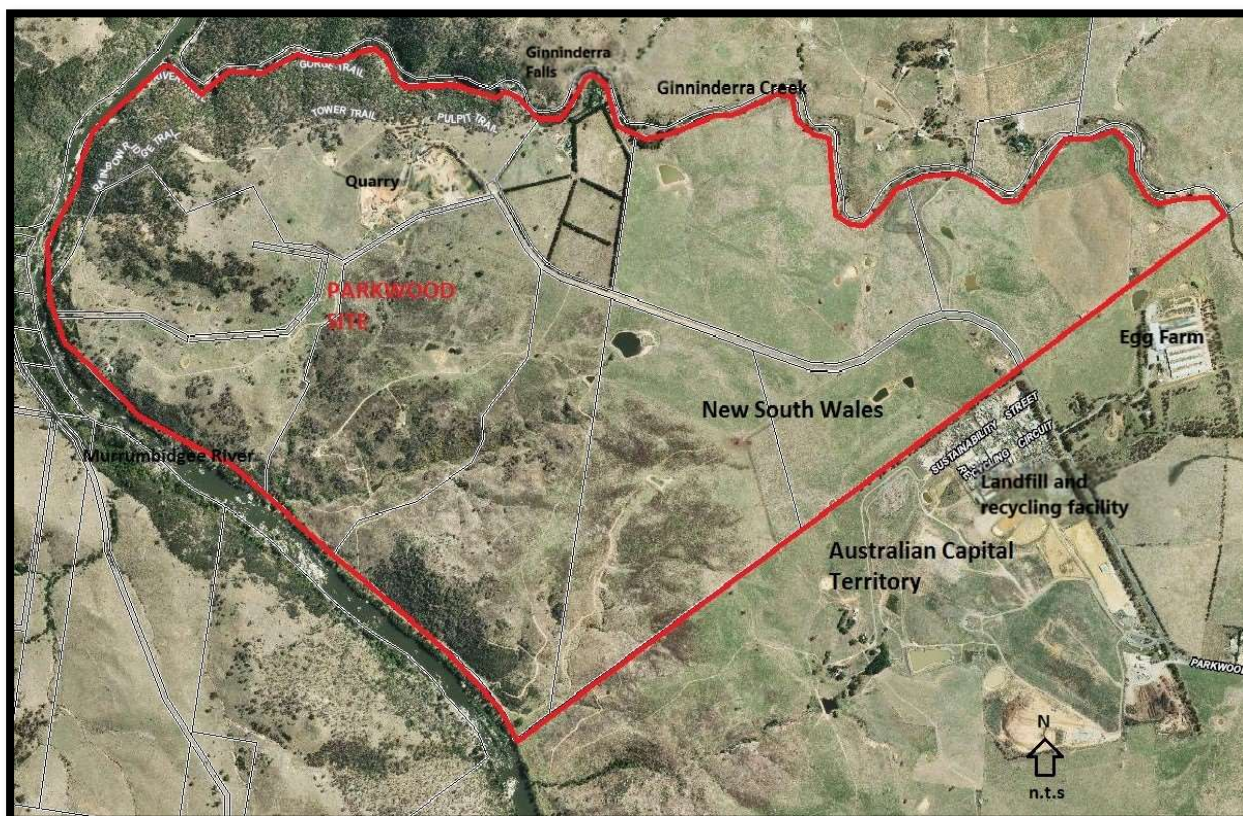


### 3. SITE DESCRIPTION

The Parkwood site is bounded by the Murrumbidgee River, Ginninderra Creek and the NSW/ACT border, and can be characterised as a land peninsula that adjoins West Belconnen in Canberra. The river corridors comprise rocky and steep gorge country, which includes Ginninderra Falls, edged by native vegetation. A central plateau of cleared land is used primarily for rural enterprises, including cattle grazing, quarrying and rural tourist accommodation. South-east of the site is Pace Farms, an egg production plant, and further south is a landfill and recycling material facility, both located in the ACT.

The landfill and recycling facility (Figure 2) will be remediated and developed for housing in the ACT before urban development occurs in Parkwood NSW.

Figure 2 Site (Source: NSW SIX Maps)



### 4. PURPOSE OF PLAN

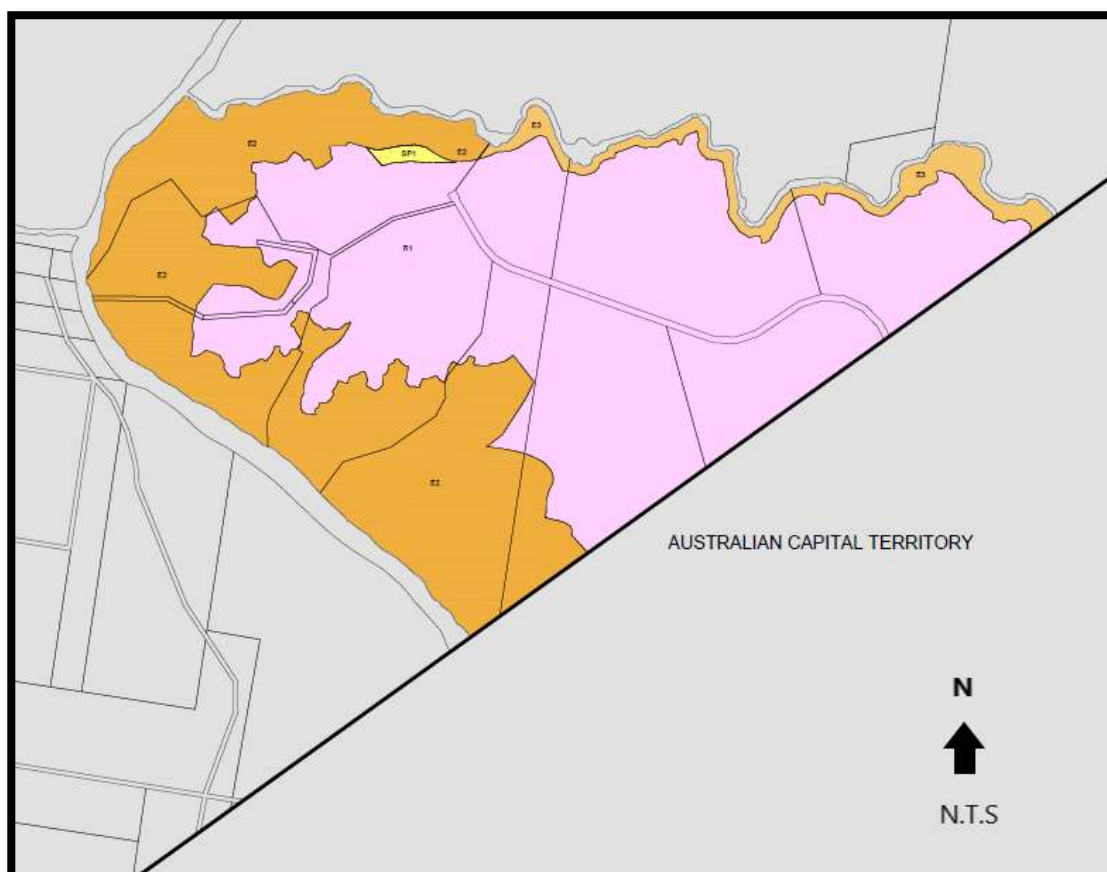
The purpose of the plan is to:

- facilitate a significant master-planned urban release within NSW as a major component of the cross-border community on both sides of the NSW/ACT border; and
- confirm and protect the conservation, cultural and landscape values of the land with reference to the Murrumbidgee River and Ginninderra Creek corridors and Ginninderra Falls.

The draft Yass Valley LEP (Parkwood) 2020 seeks to rezone land at Parkwood to R1 General Residential Zone, SP1 Special Activities Zone, E3 Environmental Management Zone and E2 Environmental Conservation Zone to accommodate approximately 5000 residential dwellings and associated urban uses, and a conservation corridor along Ginninderra Creek and the Murrumbidgee River (Figure 3). The plan is part of a broader urban release area at West Belconnen in the Australian Capital Territory (ACT).



Figure 3 Proposed Zones in Parkwood



Yass Valley LEP 2013 (Amendment 9) seeks to remove and exclude the Parkwood site from the Yass LEP 2013 through mapping changes and is administrative in nature.

## 5. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Goulburn state electorate. Wendy Tuckerman MP is the State Member.

The site falls within the Eden Monaro federal electorate. Mike Kelly MP was the previous Federal Member. A by-election for the federal electorate was held on the 4 July 2020. The Labour candidate, Kirsty McBain, has claimed victory in this election.

To the regional planning team's knowledge, neither the State Member nor former Federal Member has made any written representations regarding the proposal.

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal.

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

## 6. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 16 April 2015 (**Attachment B**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on the 23 January 2017, 27 April 2018 and 4 October 2018 (**Attachment C1**) to extend the time to complete the plan. The LEP is due to be finalised by 16 April 2021.

The Gateway determination was altered on 28 August 2018 (**Attachment C2**) for a revised planning proposal (**Attachment A**) that included a requirement that before the plan is

finalised an MoU is to be prepared between ACT and NSW Governments and Yass Valley Council on governance arrangements and a servicing model for the provision of government services and infrastructure to Parkwood.

## **7. PUBLIC EXHIBITION**

The proposal was publicly exhibited by Council from 25 March 2019 to 17 May 2019 in accordance with the Gateway determination.

A Council report on the public exhibition of the planning proposal was tabled at a Council meeting on the 23 October 2019. The report stated that at the conclusion of the public exhibition period a total of 54 submission and 12 postcards were received by Council. A petition with 140 signatures was also received on behalf of the Ginninderra Falls Associations.

A summary of the issues raised by the public (shown in italics below) and Council responses are as follows:

- *Rights of adjoining landowners, e.g. property access, fencing, stock access to creek*
  - These matters can be dealt with at the DA stage.
- *Need for independent review and scientific research*
  - The studies and assessments accompanying the planning proposal have been considered by Council and agencies and are considered adequate for proceeding with the LEP.
- *Format of planning documentation, i.e. volume and complexity of supporting studies*
  - These are necessary to support the planning proposal and are a result of significant work on a large and complex development.
- *Existing use rights for the quarry and concerns with dedication of E2 Zone and adequate compensation*
  - The quarry has existing use rights and is therefore not impacted by the proposal. The LEP will not force any landowner to dedicate E2 land.
- *TransGrid - Transmission lines and concerns with the use of the electricity easements as a community garden shown in concept masterplan*
  - The concept masterplan is not part of the LEP. This matter can be dealt with at subdivision stage and as part of the DCP for the site.
- *Concerns with the shape, width and area of the conservation corridor*
  - The extent of the conservation corridor has been determined by studies on detailed flora, fauna and Aboriginal Heritage studies.
- *Concern with protection of biodiversity values (particularly Rosenberg's Monitor, Pink Tailed Worm Lizard, Natural Temperate Grassland)*
  - The planning proposal was accompanied by several ecological studies, including studies on the Rosenberg's goanna, Pink Tailed Worm Lizard (threatened species) and native grassland that were used to delineate the E2 Zone. Development will also be required to comply with the Biodiversity and Conservation Act.
- *Conservation Trust and management arrangements – Not focused on conservation*
  - While not part of the LEP it is intention of proponent to dedicate E2 Zoned land to Council to be managed by an Environmental Trust with various income streams to enhance biodiversity and manage Ginninderra Falls.
- *Preference for a National Park*
  - The NSW Government has previously advised there is no intention to create a NSW national park within the Parkwood site.
- *Bushfire risks and overlap of Ginninderra Falls Precinct with Asset Protection Zone*
  - A Strategic Bushfire Assessment Report was prepared for the planning proposal and reviewed by the NSW Rural Fire Service. THE NSW RFS was

satisfied with the report and did not object to the LEP proceeding. Furthermore, any development within the site will be required to comply with Australian Standard AS 3959 and the recently revised NSW Planning for Bushfire Protection Guidelines.

- *Retention of the existing Environmental zoning*
  - The current boundary of the E3 Environmental Protection Zone is arbitrary and followed lot boundaries rather than from evidence-based assessments. The proposed zones are based on evidence and the proposed E2 zone along the conservation corridor provides a higher level of protection than the current E3 Zone.
- *Aboriginal cultural heritage/ Lack of reference to Aboriginal land, water rights and Native Title*
  - The aboriginal cultural values of the site have been thoroughly assessed and documented in reports prepared with the planning proposal. They provide support for the establishment of the E2 Zone along the Murrumbidgee River and Ginninderra Creek and the identification of Aboriginal Place of heritage significance on the heritage map.
  - The proponent has also established the Ginninderry Aboriginal Advisory Group that includes representatives from local Aboriginal groups to advise on the management arrangements for the site, including Ginninderra Falls.
  - There is no basis to the claim that the proposal discriminates against any person based on race.
- *Concern with impacts at the urban/conservation interface*
  - The LEP includes a provision to give particular consideration on the design, siting and location of urban development to avoid impacts on the conservation corridor.
- *Cross border Servicing*
  - Yass Valley Council, NSW and ACT Governments will continue to discuss the best way to provide cross border services as part of the recently signed NSW/ACT MoU and Parkwood agreement.
- *Need for holistic approach to development north of the ACT*
  - The Parkwood proposal is consistent with Yass Valley Settlement Strategy adopted by Council and endorsed by DPIE and the Strategy was clear on why Parkwood was included in the Strategy, but no other areas located on the NSW/ACT border.
- *Proposed lots within the conservation corridor and adjacent to the Falls*
  - LEP Provisions that enable the creation of lots and additional permitted uses in the E2 Zone and near Ginninderry Falls have been carefully considered by Council and NSW agencies to ensure environmental impacts are minimised. Many of these provisions reflect existing developments within these areas, e.g. Ginninderry Homestead. It is also the proponent's intention to dedicate the E2 zoned land to Council to enable the area to be managed in perpetuity to protect environmental values.
- *Need for Cat containment*
  - Council will continue to advocate for a change to the Local Government Act to enable management of domestic cats in urban areas to avoid impacts in the conservation corridor.
- *Land ownership and staging*
  - Staging of development is required to be addressed in a development control plan for the site.

After assessment of the community submissions Council concluded that the submitted Planning Proposal and supporting documents adequately addressed most of the issues. Furthermore, recommended changes to the Planning Proposal and LEP will adequately address the remaining valid concerns. Several issues raised are outside the scope of the Planning Proposal and LEP.

Council's response to the community submissions is shown in **Attachment G**.

## **8. ADVICE FROM PUBLIC AUTHORITIES**

Consultation was undertaken with ACT and NSW agencies at a government services forum held on 16 March 2016 in accordance with Condition 3 of the original Gateway determination. The purpose of the agency forum was to assist Council and the proponent prepare a Cross Border Government Servicing Report (**Attachment H**) required under condition 1 of the Gateway determination. The Servicing Report was incorporated with the exhibited revised planning proposal.

The proponent and Council have also held several informal meetings with ACT and NSW state agencies seeking advice on the preparation of the revised planning proposal before it was issued with a Gateway alteration (**Attachment C2**). These meetings related to cross border servicing and infrastructure, environmental conservation, bushfire hazard management and requirements for the drafting of the LEP.

Another forum was held on the 12 March 2019 prior to community consultation in accordance with condition 9 of the Gateway determination (as amended). The purpose of this forum was to provide agencies with an outline of the revised planning proposal and the Servicing Report. Representatives from 23 NSW and ACT agencies attended the second forum in addition to Council staff and the proponent's consultancy team.

In addition to the agency forum Council undertook further consultation with the following agencies in accordance with the condition 6 of Gateway determination (as amended);

- ACT Government (\*);
- Icon Water (\*);
- NSW Department of Premier and Cabinet;
- NSW Treasury;
- Ambulance Service of NSW (\*);
- NSW Department of Justice;
- Local Land Services;
- Fire and Rescue NSW (\*);
- NSW Rural Fire Service\*;
- NSW Department of Family and Community Services;
- NSW Department of Education (\*);
- NSW Department of Health;
- Transport for NSW (\*);
- Department of Planning and Environment – Resources and Energy;
- Office of Emergency Management;
- NSW Police Force (\*);



- NSW Cross Border Commissioner;
- NSW State Emergency Service (\*);
- Office of Environment and Heritage (\*);
- NSW Office of Local Government;
- NSW Department of Primary Industries – Agriculture (\*);
- NSW Department of Industry – Water;
- NSW Department of Industry – Crown Lands (\*); and
- Local Aboriginal Land Council.

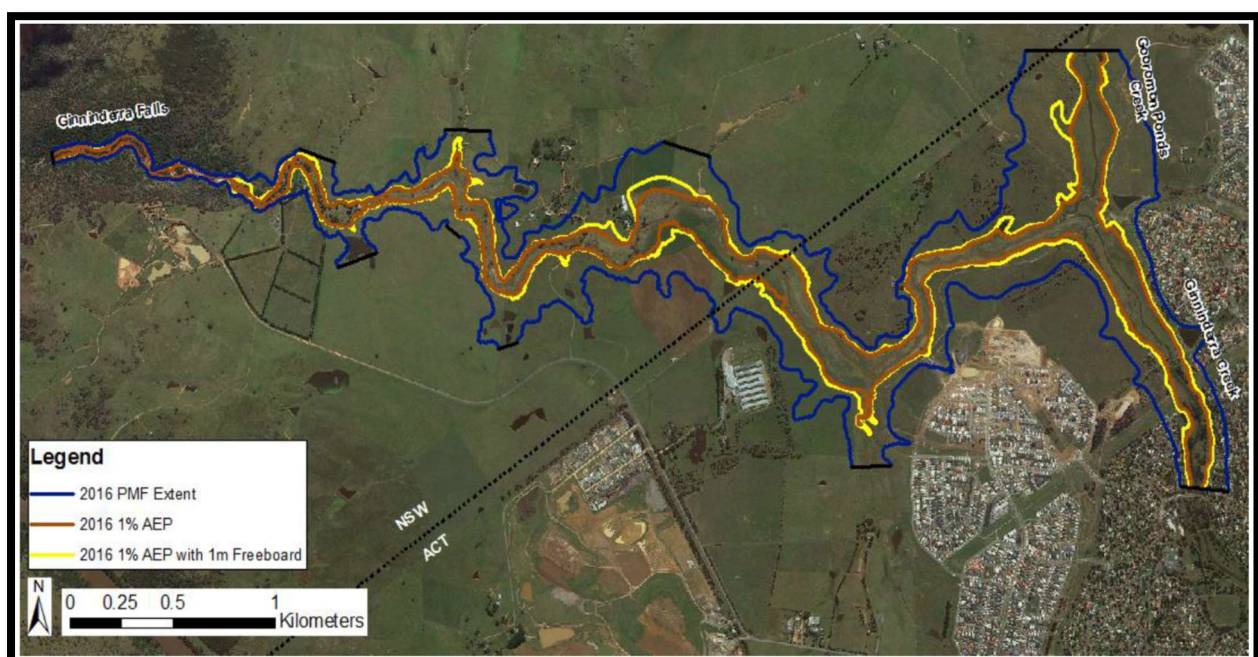
Council received a response from 11 of these agencies identified by an (\*). Council also consulted with TransGrid in relation to a transmission line running through the site. Agency submissions are shown in **Attachment F** and Council's response to the agency submissions is shown in **Attachment G**.

There were no objections to the planning proposal. Agencies raised the following concerns and/or comments on the planning proposal.

### Flood Risk Management

Flood information from the proponent prepared by Jacobs consulting 2016 identifies the 1:100 AEP event plus 1 metre freeboard and the extent of the Probable Maximum Flood event (Figure 4). The 1:100 AEP plus 1 metre freeboard identified in the Jacobs flood report has been used to identify the flood planning area on the proposed LEP Flood Map and to define the boundary between the R1 General Residential Zone and E3 Environmental Management Zone along Ginninderry Creek.

Figure 4 Extent of AEP flood, 1 metre freeboard and probable maximum flood (PMF) along Ginninderry Creek (Source Jacobs 2016).



The flood unit from the Office of Environment and Heritage (OEH), now called DPIE Biodiversity and Conservation (DPIE B&C), indicated in June 2019 that although much of the land proposed for urban development maybe on high ground the planning proposal

does not provide suitably reliable flood risk information to establish consistency of the proposal with the principles of the Floodplain Development Manual or section 9.1 Direction 4.3 Flood Prone Land. The flood team recommended that the planning proposal include additional information on flood risk management.

A submission from the NSW State Emergency Services also requested further information on flooding, including the impacts of the probable maximum flood (PMF).

The proponent engaged consultants Calibre to prepare a report flood risk assessment using the Jacobs study to respond to concerns raised by the OEH. The Calibre report dated 23 September 2019 acknowledged that the 1:100 AEP flood level will be contained in the E3 Zone and that the PMF encroached into land proposed to be zoned R1 General Residential Zone. The report stated that normally a 0.5 metre freeboard is used in identifying the flood planning area and that Jacobs had adopted a 1 metre freeboard *“to account for uncertainties in inflow data that they have used in the flood modelling of the Ginninderra Creek”*.

The Calibre report concluded:

- the flood risk assessment for the planning proposal has demonstrated compliance with the provisions set out by section 9.1 Direction 4.3 Flood Prone Land and the NSW Floodplain Development Manual; and
- flood prone land along the Murrumbidgee River is to be zoned E2 Environmental Conservation Zone and therefore its impact on the residential zone is irrelevant.

The Calibre report also concludes that:

- *“some land zoned as General Residential Zone (R1) is below the PMF level. Development within these areas should not include essential community facilities and critical infrastructure”* and
- *“Key consideration should be given to access routes to ensure that residential areas below the PMF level can safely be evacuated during an extreme storm”*.

Council considered that issues raised by agencies and development controls recommended by Calibre would usually be developed and refined through a Floodplain Risk Management Plan. Council therefore resolved at its meeting 23 October 2019 that the LEP clause on the preparation of a Development Control Plan for Parkwood (DCP) should require that the DCP address flood risk management, including the recommendations of a Floodplain Risk Management Study and Plan.

A further submission from the DPIE B&C flood unit in September 2019 re-iterated its concerns with the adequacy of the flood analysis and the impacts of PMF on future residential development. The DPIE B&C flood unit determined the PMF level will be in the order of 10 metres above the flood planning level (FPL) along Ginninderra Creek and that some areas proposed for residential development would be susceptible to flood risk, including above-roof inundation in large extreme floods. The DPIE B&C flood unit recommend a more detailed flood assessment be prepared to support the planning proposal in the absence of a Floodplain Risk Management Plan and the assessment include consideration of flood warning times, evacuation capacity and flood recovery.

Comment

The ‘NSW Guideline on Development Controls on Low Risk Areas - Flood Development Manual’ confirms that, unless there are exceptional circumstances, councils



should adopt the 100-year flood as the flood planning level for residential development. The guideline further states that in *“proposing a case for exceptional circumstances, a Council would need to demonstrate that a different FPL was required for the management of residential development due to local flood behaviour, flood history, associated flood hazards or a particular historic flood.”*

The Parkwood LEP will zone land within the 1:100 AEP plus 1 metre freeboard along Ginninderry Creek to E3 Environmental Protection Zone and E2 Environmental Conservation Zone with an 80-ha minimum lot size. This approach is consistent with the section 9.1 Direction 4.3 Flood Prone Land that states that a planning proposal must not rezone a ‘flood planning area’ from an environmental protection zone to a residential zone.

The post exhibition recommendations to add an LEP provision on flood risk management adequately addresses issues raised by agencies and the recommendations in the Calibre report relating to the potential impacts of the probable maximum flood (PMF) on ‘community facilities’, ‘critical infrastructure’ and key access routes in the R1 General Residential Zone.

Noting the broad scale of the proposed rezoning, it is considered that the proponent has addressed flooding in an adequate manner to demonstrate nearly all areas proposed to be zoned for residential development are not affected by any flooding. It may be the case that investigations of flood behaviour in subsequent planning processes such as a floodplain risk management plan, the DCP or assessment of development applications will require further adjustment to zoning arrangements or building footprints.

### Biodiversity

Although the submission from the former OEH states that the planning proposal and accompanying studies have provided enough information on biodiversity to inform the rezoning proposal, Council also resolved to adopt the following post exhibition suggestions by the former OEH that seek to clarify other LEP provisions on biodiversity:

1. The additional permitted use provisions that will permit subdivision of part 527 Parkwood Road zoned E2 Environmental Conservation Zone to create a lot below the minimum lot size is to ensure the future lot has a minimum area of 3 and maximum area of 5 hectares, and the existing dwelling house must be within the lot.
2. The additional permitted uses provisions that will permit subdivision of part 468 Parkwood Road, Wallaroo (Ginninderry Homestead) to create a lot below the minimum lot size in the E3 Environmental Conservation Zone is to ensure that all of the land zoned E3 is within the lot.
3. The provision on the conservation corridor is to ensure the corridor refers to land zoned E2 Environmental Conservation Zone, i.e. not land zoned E3 Environmental Management Zone.
4. The Terrestrial Biodiversity Map will include Pink Tailed Worm Lizard habitat of low value located outside the E2 Environmental Conservation Zone.
5. The provision on the conservation corridor is to ensure development consent must not be granted in the R1 General Residential Zone and SPI Special Activities Zone until satisfactory arrangements have been made to secure land zoned E2 Environmental Management Zone. This may include dedication of the E2 Zoned land to Council and/or biocertification of the E2 Zoned land under the *Biodiversity and Conservation Act 2016*.

## Comment

Items 1-5 are supported because they seek to clarify additional permitted uses in the E2 and E3 Zones and to ensure protection and management of environmentally sensitive areas as a result of potential adverse effects of urban development. These items also address issues and concerns raised by the Department of Biodiversity and Conservation.

## Aboriginal Heritage

The Parkwood LEP includes mandatory standard instrument provisions on heritage conservation and identifies areas of significant Aboriginal cultural value on the heritage map (i.e. *Aboriginal place of heritage significance*). This area coincides with areas to be zoned E2 Environmental Conservation Zone and E3 Environmental Management Zone.

In addition, the LEP clause on the preparation of a Development Control Plan for Parkwood (DCP) requires the identification and management of Aboriginal cultural heritage in the DCP.

Council has also resolved to agree with a request from the former OEH to include an additional LEP provision in the heritage clause that 'turns off' the need for development consent under the heritage clause if it is consistent with an Aboriginal Heritage Management Plan.

## Comment

Under LEP clause 5.10 (6) the consent authority "*may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.*"

Under LEP clause 5.10 (8) the consent authority must, before granting development consent to the carrying out of development in an *Aboriginal place of heritage significance* consider the effect of the proposed development and notify and take into account comments from the local Aboriginal communities.

The identification of all land zoned E2 Environmental Protection Zone as an *Aboriginal place of heritage significance* on the heritage map is supported because it will trigger the requirements of LEP clause 5.10 Heritage conservation.

The insertion of an LEP clause that turns off the need for development consent provided it is consistent with a non-statutory document is not legally possible and would be inconsistent with the SI LEP.

The need for an additional LEP provision regarding the preparation of an Aboriginal Heritage Management Plan is warranted because this matter is already dealt with by mapping the *Aboriginal place of heritage significance* on the heritage map and the subclauses 5.10 (6) and (8).

Furthermore, any Aboriginal objects and places found on land zoned R1 General Residential Zone are protected under the *National Parks and Wildlife Act 1974* and relics cannot be disturbed without a permit issued by OEH.

It is therefore recommended the post exhibition change to amend the LEP to include an additional provision on the preparation Aboriginal Heritage Management Plan and 'turning off' development consent is not required.

## Egg Farm Buffer

Pace Egg Farm is in the ACT (Figure 2) and is in proximity to future urban development in Parkwood. The planning proposal states that the lease of the egg farm will expire in 2032 and it will not be operational when urban development begins in NSW.

The planning proposal states it is still appropriate that a 500-metre-wide buffer area be applied around the farm to address potential noise/odour issues. The objective of the LEP buffer area is to protect the operational environment of the egg farm and to limit the impact of the egg farm on proposed sensitive land uses.

In response to a submission from DPI Agriculture Council resolved to amend the width of the buffer area from 500 metres to 1,000 metres in accordance with DPI's handbook entitled "Living and Working in Rural Areas".

#### Comment

The post exhibition change to the buffer area is supported because it will address the requirements of DPI Agriculture and limit the potential for land use conflict. The buffer clause will protect the operation of the egg farm until it ceases and limit the impact of the egg farm on proposed sensitive land uses if the lease is extended.

#### Bushfire Risk Management

The NSW Rural Fire Service raised no objections to the progression of the planning proposal subject to the following;

- Mechanisms are in place to ensure implementation of the Strategic Bushfire Assessment;
- Future stages of the development are to comply with the Planning for Bushfire Protection Guidelines;
- The NSW RFS is to be given an opportunity to comment on any draft Bushfire Management Plan for the conservation corridor and the comments incorporated into the final Plan;
- Development consent must not be provided for development within the site until a cross border service delivery agreement has been finalised; and
- The NSW RFS submission does not represent endorsement of the concept masterplan in the planning proposal.

Council resolved at its meeting 23 October 2019 that the LEP clause on the preparation of a Development Control Plan for Parkwood (DCP) require that the DCP address bushfire management, including the recommendations of the Strategic Bush Fire Assessment Report.

Council also resolved to amend the proposed LEP to include bushfire management provisions into the LEP's Conservation/Urban Interface clause. This clause seeks to require satisfactory management of urban/bushland edge in response to urban development of the R1 General Residential Zone.

#### Comment

The post exhibition amendment to the LEP clauses on the preparation of a Development Control Plan and Conservation/Urban Interface to include provisions to address bushfire risk management is supported. It will potentially satisfy the Services recommendations for a mechanism to implement the Strategic Bush Fire Assessment Report and the requirements of 'NSW Planning for Bushfire Protection' in response to urban development.

#### NSW Public School Infrastructure

A submission from NSW Department of Education (DoE) indicated that the Parkwood urban release area requires a new primary school and secondary school at a cost in excess of \$100m (2019 figures). It suggested that a Satisfactory Arrangement Clause should be included in the LEP to ensure arrangements are made for the provision of school infrastructure once the site is rezoned for urban development.



Council also resolved at its meeting 23 October 2019 that the LEP clause on the preparation of a Development Control Plan for Parkwood (DCP) require the DCP to indicate that an area is to be set aside for a public school as required by the NSW Department of Education.

#### Comment

The Parkwood LEP includes a clause on Satisfactory Arrangements for State Infrastructure consistent with the intent of the planning proposal. This clause will satisfy the request by the NSW Department of Education.

The standard clause adequately addresses the need to consider State and local services and infrastructure and the SIC clause adequately addresses to requirements for a school site. As such it is not necessary to amend the standard clause on the preparation of a DCP.

#### Services and infrastructure

Council resolved at its meeting 23 October 2019 that:

- the LEP clause on the preparation of a Development Control Plan for Parkwood (DCP) require that an area is to be set aside for a waste or resource management facility or depot consistent with the additional use provision over lot 1 DP 771051,
- include a different definition of 'Local' and 'State and Territory' public infrastructure under Part 6 of the LEP

#### Comment

The draft plan includes an item under the Additional Use Provisions to permit a 'waste or resource management facility' or 'depot' within 298 Parkwood Road consistent with the exhibited planning proposal. The facility or depot will be operated by Council.

The standard clause adequately addresses the need to consider State, Territory and local services and infrastructure. As such it is not necessary to amend the standard clause on state of local infrastructure, including the list of services and infrastructure covered by the clause.

#### Crown Land

In response to a submission from DPI Crown Lands, Council resolved at its meeting 23 October 2019 that the LEP clause on the preparation of a Development Control Plan for Parkwood (DCP) require consideration of development impacts and future access arrangements on adjoining crown waterways, i.e. the Murrumbidgee River and Ginninderra Creek.

#### Comment

The Murrumbidgee River, Ginninderra Creek, Ginninderra Falls and associated riparian areas are significant natural and recreational assets owned and managed by the Crown that will experience increased recreational pressure from urban development and improved access.

The post exhibition amendment to the LEP clause on the preparation of a Development Control Plan to include provisions to consider impacts on, and access to, Crown waterways is supported.

## **9. CROSS BORDER SERVICING**

The Parkwood urban release area is intended to be contiguous with the West Belconnen urban release area in the ACT and most services required for urban development in the Parkwood urban release area will be provided by the ACT Government.

The Services and Infrastructure Report (**Attachment H**) dated June 2017, submitted with the revised planning proposal to satisfy Condition 1 of the Gateway determination, sets out the proposed arrangements for government service delivery. It is based on feedback received at an agency forum held on the 16 March 2016 attended by service providers from the ACT and NSW governments and Yass Valley Council.

The Report outlines two potential viable options for cross border service delivery;

- a 'base option' for service delivery that does not require changes to NSW legislation (e.g. Local Government Act), and
- a longer-term servicing option that does require changes to NSW legislation.

The Report acknowledges there are more efficient and effective service delivery options in addition to the base case. It also acknowledges that the long lead time before urban development occurs in NSW provides flexibility to respond to emerging government policy, legislative directions, and changes in government and Council preferences over time. It concludes that there is an opportunity for exploration of more innovative and efficient service delivery options to achieve the 'borderless community' approach to service delivery by putting in place Parkwood governance arrangements between the NSW and ACT Governments and Yass Valley Council.

To provide greater certainty on implementing the governance arrangements under the Service and Infrastructure Report Condition 10 of the Gateway determination (as amended) required the following; *"a Memorandum of Understanding (MoU) is to be agreed by the ACT and NSW Governments and Yass Valley Council to establish appropriate governance arrangements and servicing model for the provision of government services and infrastructure to the Parkwood urban release area."*

Condition 10 has been addressed by the signing of the Parkwood Urban Release Area Governance Framework by the ACT and NSW Governments and Yass Valley Council (**Attachment I**). The Parkwood Framework is part of the new cross border MoU between the ACT and NSW Governments.

The Parkwood Framework generally mirrors Chapter 7 of the Service and Infrastructure Report, 'Ongoing governance and engagement – State and Territory' (**Attachment H**). The difference is that the Parkwood Framework requires the setting up of a new steering committee comprising representatives from ACT and NSW Governments and Yass Valley Council (to meet biannually) rather than using a Regional Governance Framework. The new committee is to be led by Regional NSW and the committee will also include the Ginninderry Joint Venture.

## **10. POST-EXHIBITION CHANGES**

Post exhibition changes have been made to the planning proposal and the Parkwood LEP following public exhibition. An assessment of the proposed changes by Council is in section 7 'Public Exhibition' and section 8 'Advice from Public Authorities' of this report.

The following major changes have been made to the plan based on the recommendations of plan finalisation report (**Attachment Report**). These changes respond to the community consultation and consultation with agencies:

- Insert a clause on flood risk management to manage urban development between the 1:100 AEP and probable maximum flood (DPIE Biodiversity and Conservation and SES);

- Insert a clause on the conservation corridor to ensure land zoned E2 Environmental Conservation Zone is appropriately managed to ameliorate impacts from urban development (Council and DPIE Biodiversity and Conservation and community);
- Change LEP buffer around egg farm from 500 metres to 1,000 metres (Council DPI Agriculture); and
- Clarify the intent of additional permitted use provisions for 3 sites to be zoned E2 Environmental Protection Zone or E3 Environmental Management Zone (Council DPIE Biodiversity and Conservation and community).

It is recommended that Council's view that these amendments be endorsed without requiring further exhibition is supported as they do not change the intent of the planning proposal as exhibited. The changes seek to clarify or addresses issues raised by the community and agencies.

## **11.ASSESSMENT**

The planning proposal and draft LEPs are supported because they:

- facilitate a master-planned urban release within NSW lands as a major component of the cross-border community on both sides of the NSW/ACT border;
- confirm and protect the conservation, cultural and landscape values of the land with reference to the Murrumbidgee River and Ginninderra Creek corridors and Ginninderra Falls;
- address relevant matters raised by agencies and the community as part of the consultation process;
- are consistent with the Gateway determination (as amended);
- are consistent with strategic planning for the area including the South East and Tablelands Regional Plan and the Yass Valley Settlement Strategy.

The final planning proposal and LEP are also supported by the Parkwood Urban Release Area Governance Framework signed by the ACT and NSW Governments and Yass Valley Council that creates a framework for the delivery of cross border infrastructure and services.

### **11.1 Section 9.1 Directions**

The delegate of the Secretary has previously agreed with the justification for the planning proposal's inconsistencies with section 9.1 Directions 1.2 Rural Zones, 1.3 Mining, Petroleum and Extractive Industries and 1.5 Rural Lands. However, Council is still required to address any potential inconsistencies with section 9.1 Directions 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans.

#### **2.1 Environmental Zones**

The planning proposal is inconsistent with this Direction as it seeks to rezone 344 ha of land zoned E3 Environmental Management under the Yass LEP 2013 to R1 General Residential Zone and SP1 Special Activities Zone.

The planning proposal states it has justified the inconsistency with this Direction with the preparation of several detailed ecological surveys and studies that have verified the extent of threatened species and conservation values in a conservation corridor along the Murrumbidgee River and Ginninderra Creek.



These studies identify the extent of remnant native vegetation and fauna habitat to be included in an E2 Environmental Conservation Zone (approximately 188 ha) and an E3 Environmental Management Zone along Ginninderra Creek (approximately 25 ha).

For example, studies by consultants Ecological Australia, Capital Ecology and the Institute of Applied Ecology have identified the high value habitat of the Pink Tailed Worm Lizard and Rosenberg's Goanna (threatened species) that will be protected in an E2 Environmental Conservation Zone.

Areas generally dominated with exotic grassland that are being used for primary production have been identified as suitable for urban development in an R1 General Residential Zone and SP1 Special Activities Zone (approximately 390 ha). Figure 3 illustrates the extent of the proposed environmental zones and urban zones.

The planning proposal also proposes inserting additional local LEP provisions to protect, conserve and manage environmentally sensitive land when the site is developed for urban development. For example, low value habitat of the Pink Tailed Worm Lizard located in the R1 General Residential Zone has also been identified on the LEP Terrestrial Biodiversity Map to ensure it is considered in development assessment under the *Environmental Planning and Assessment Act 1979* and the *Biodiversity Conservation Act 2016*.

#### Comment

A submission dated 14 June 2019 from the Office of Environment and Heritage (OEH, now DPIE Biodiversity and Conservation) acknowledged the Council and proponent had extensively consulted with OEH to prepare the proposal and supported the proposed E2 Environmental Conservation Zone along the Murrumbidgee River and Ginninderra Creek (conservation corridor).

Additional LEP provisions to protect, conserve and manage the conservation corridor have been included in the LEP (see draft LEP - clause 7.12 conservation corridor) to address a request by the former OEH to ensure the on-going future management of biodiversity values in the E2 Environmental Conservation Zone.

Draft LEP Clause 7.9 - Exceptions to minimum subdivision lot sizes for 527 Parkwood Road has, been adjusted to limit the extent of proposed additional permitted uses in the E2 Environmental Conservation Zone in response to concerns raised the former OEH on potential impacts on the proposed conservation corridor.

The OEH submission stated that the planning proposal and accompanying studies have provided enough information on biodiversity to inform the rezoning proposal and support the consistency with the Ministerial Direction.

It is therefore recommended the Secretary agree that the inconsistencies with Direction 2.1 Environmental Zones have been justified by studies prepared in support of the planning proposal which give consideration to the objectives of this direction.

#### Direction 2.3 Heritage Conservation

This Direction applies to the site as Aboriginal heritage and cultural site assessments and due diligence reports of Aboriginal Cultural Heritage submitted with the planning proposal have identified scattered artefacts, cultural deposits and significant cultural values throughout the Parkwood site.

The Parkwood LEP includes mandatory standard instrument provisions on heritage conservation and identifies areas of significant Aboriginal cultural value on the LEP heritage map. These areas are also proposed to be zoned E2 Environmental Conservation Zone.

The planning proposal states it is consistent with this Direction because, in addition to applying an E2 Environmental Conservation Zone to significant Aboriginal sites, the LEP includes an

additional requirement under the LEP heritage clause to require development to be consistent with an Aboriginal heritage management plan consistent with a request from the former OEH.

The planning proposal also acknowledges that all Aboriginal objects and places are protected under the *National Parks and Wildlife Act 1974* and relics cannot be disturbed without a permit issued by the former OEH. The planning proposal indicates that an Aboriginal heritage impact permit will be required for the removal of scattered artefacts of low cultural potential located within the proposed R1 General Residential Zone to enable urban development to proceed. It is likely that these artefacts will be relocated within the conservation corridor to maintain their connection to country.

The planning proposal did not identify any items of European heritage significance on the site.

#### Comment

A submission dated 14 June 2019 from the former OEH states that the planning proposal and accompanying studies provided enough information on Aboriginal cultural heritage to inform the rezoning proposal and support the consistency with the Ministerial Direction 2.3 Heritage Conservation.

It is therefore concluded that the planning proposal is consistent with Direction 2.3 Heritage Conservation.

#### Direction 2.6 Remediation of Contaminated Land

Direction 2.6 became effective on the 17 April 2020 and replaced clause 6 of SEPP 55 Remediation of Land. It applies to all planning proposals that seek to rezone land for urban development.

The planning proposal includes a Phase 1 preliminary contamination investigation by AECOM (June 2014). The report concluded that, based on the data obtained to date, the potential for significant and widespread contamination to be present at the site is considered to be low throughout the majority of the agricultural areas of the site.

The planning proposal was consistent with clause 6 of SEPP 55 and is consistent with Direction 2.6.

#### Direction 4.3 Flood Prone Land

A flood assessment prepared by Jacobs consulting 2016 identifies the 1:100 AEP event plus 1 metre freeboard and the extent of the Probable Maximum Flood (PMF) event (Figure 4). The 1:100 AEP plus 1 metre freeboard has been used to identify the flood planning area on the proposed LEP Flood Planning Map and to define the boundary between the R1 General Residential Zone and E3 Environmental Management Zone along Ginninderry Creek.

A flood assessment also indicates that flood prone land (land affected by the probable maximum flood) is proposed to be rezoned R1 General Residential Zone. The planning proposal is therefore inconsistent with Direction 4.3 because it seeks to rezone flood prone land for urban development.

The 'NSW Guideline on Development Controls on Low Risk Areas- Flood Development Manual' confirms that, unless there are exceptional circumstances, councils should adopt the 100-year flood as the flood planning level for residential development. The guideline further states that in *"proposing a case for exceptional circumstances, a Council would need to demonstrate that a different FPL was required for the management of residential development due to local flood behaviour, flood history, associated flood hazards or a particular historic flood."*

#### Comment

The Parkwood LEP will zone land within the 1:100 AEP plus 1 metre freeboard along Ginninderry Creek to E3 Environmental Protection Zone and E2 Environmental Conservation Zone with an 80-ha minimum lot size. This approach is consistent with the section 9.1 Direction 4.3 Flood Prone Land and NSW Guideline that states that a planning proposal must not rezone a 'flood planning area' from an environmental protection zone to a residential zone and, unless there are exceptional circumstance, Council must use the 1:100 AEP flood level to identify the flood planning area.

The NSW flood unit has indicated that further flood information is required, particularly on the impacts and management of urban development on land affected by the PMF.

The post exhibition recommendations to add an LEP provision on flood risk management adequately addresses issues raised by agencies and the recommendations in the Calibre report relating to the potential impacts of the probable maximum flood (PMF) on 'community facilities', 'critical infrastructure' and key access routes in the R1 General Residential Zone.

Noting the broad scale of the proposed rezoning, it is considered that the proponent has addressed flooding in an adequate manner to demonstrate nearly all areas proposed to be zoned for residential development are not affected by any flooding. It may be the case that investigations of flood behaviour in subsequent planning processes such as the DCP or assessment of development applications will require further adjustment to zoning arrangements or building footprints.

It is recommended that the Secretary determine that the inconsistency with section 9.1 Direction 4.3 Flood Prone Land has been justified by studies and appropriate provisions in the proposed LEP.

#### Direction 4.4 Planning for Bushfire Protection

Approximately 25 per cent of the site is identified as bushfire prone land on the Yass Valley bushfire prone land map. Most of the mapped bushfire prone land within Parkwood will be within the E2 Environmental Conservation Zone and the E3 Environmental Management Zone. Some areas on the edge of land identified as bushfire prone land are proposed to be zoned R1 General Residential Zone.

Council consulted with the NSW Rural Fire Service (RFS) on revised planning proposal prior to community consultation. The RFS advised Council in March 2018 that a strategic bushfire study should be prepared to address its concerns regarding road egress/access from future urban areas, potential for land use conflict and to ensure the strategic implications of future development within a bushfire prone landscape are fully considered.

A Strategic Bushfire Assessment dated February 2019 was subsequently prepared by Ecological Australia to accompany the exhibited planning proposal.

The NSW Rural Fire Service, in its latest response dated 16 July 2019 on the planning proposal and Strategic Bushfire Assessment, stated that it raised no objections to the progression of the planning proposal.

Council resolved at its meeting 23 October 2019 that the LEP clause on the preparation of a Development Control Plan for Parkwood (DCP) require that the DCP address bushfire management, including the recommendations of the Strategic Bush Fire Assessment Report.

Council also resolved to amend the proposed LEP to include bushfire management provisions into the LEP's Conservation/Urban Interface clause. This clause that seeks to



require satisfactory management of urban/bushland edge in response to urban development of the R1 General Residential Zone.

#### Comment

The planning proposal is consistent with the Direction 4.4 Planning for Bushfire Protection because Council has consulted with the NSW Rural Fire Service and satisfactorily addressed issues raised by the Service.

#### Direction 5.10 Implementation of Regional Plans

The report on the Gateway alteration for the revised planning proposal stated that it is consistent with the regional plan because it seeks to:

- progress the delivery of housing supply in an urban release area identified in the plan
- address cross border servicing issues
- mitigate the environmental impacts of urban development;
- manage bushfire hazard risk;
- manage/enhance the environmental assets within environmentally sensitive areas; and
- promote the development of a master-planned sustainable community.

The Regional Plan acknowledges the Parkwood urban release area in assisting to meet the demands arising from population growth. For example, the Regional Plan's narrative on Yass Valley relating to 'Housing' requires the identification and management of efficient delivery of services to the proposed Parkwood development. This matter has been addressed in the Services and Infrastructure Report (**Attachment H**) and the Parkwood Urban Release Area Governance Framework signed by the ACT and NSW Governments and Yass Valley Council (**Attachment I**). See also section 9 on Cross Border Servicing.

#### Recommendation

It is recommended that the Secretary determine that the inconsistencies with section 9.1 Direction 2.1 Environmental Protection Zones and 4.4 Flood Prone Land Directions have been justified by studies and appropriate provisions in the proposed LEP.

### **11.2 State environmental planning policies**

Previous reports on the Gateway determination and the Gateway alteration for the revised planning proposal provided information on the consistency of the planning proposal with SEPPs. The draft LEP is consistent with relevant SEPPs or deemed SEPPs.

### **11.3 Regional plans**

Previous reports on the Gateway determination and the Gateway alteration for the revised planning proposal provided information on the consistency of the planning proposal with the South East and Tableland Regional Plan. See also section 11.1 regarding the consistency of the planning proposal with Direction 5.10 Implementation of Regional Plans.

The planning proposal is consistent with the South East and Tablelands Regional Plan. The narrative for Yass Valley is to identify and manage the efficient delivery of services to Parkwood and this has been accomplished with the completion of the Services and Infrastructure Report (**Attachment H**) and the signing of the Parkwood Urban Release Area Governance Framework by the ACT and NSW Governments and Yass Valley Council (**Attachment I**).

### **11.4 Local Plans**

The planning proposal is consistent with the Yass Valley Settlement Strategy adopted by Council and endorsed by the Department on the 20 September 2018. The Strategy clearly

identified Parkwood as an urban release area to accommodate population growth in the Yass LGA and the region.

The planning proposal is also consistent with the Yass Valley Local Strategic Planning Statement (LSPS) adopted by Council and has been uploaded onto the Department's planning portal on the 18 June 2020.

The LSPS also recognises Parkwood as an urban release area in Yass Valley and Council has completed one of the actions in the LSPS, i.e. signing the Parkwood Urban Release Area Governance Framework that establishes a framework the delivery of services and infrastructure (**Attachment I**).

## **12. MAPPING**

The planning proposal requires both the preparation of two sets of maps;

- maps for a new standard instrument LEP to be named Yass Local Environmental Plan (Parkwood) 2020; and
- amending maps sheets to exclude the Parkwood site from Yass Local Environmental Plan 2013, i.e. Yass Valley Local Environmental Plan 2013 (Amendment No 9).

A new standard instrument LEP was required because of the need to apply site specific land use tables and other local LEP provisions for Parkwood.

GIS data and mapping information were prepared by the proponent and the Department's GIS unit finalised all of the required maps in consultation with the Council and the Department's regional office.

The Yass Local Environmental Plan (Parkwood) 2020 comprises the following maps:

- Land Application Map
- Land Zoning Map
- Lot Size Map
- Land Reservation Acquisition Map
- Additional Permitted Uses Map (Schedule 1)
- Heritage Map (Schedule 5)
- Terrestrial Biodiversity Map
- Flood Planning Map
- Groundwater Vulnerability Map
- Local Clause Map (Egg Buffer and Conservation Corridor)
- Urban Release Area Map (Part 6)

The final maps have been checked by the Regional Office and DPIE GIS team.

## **13. CONSULTATION WITH COUNCIL**

Council was initially consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* on the 26 June 2020 (Attachment E).

Council provided initial comments on a preliminary version of the draft LEP on the 29 June 2020. The Department and Council discussed all of the issues raised by Council at a meeting held on the 7 July 2020. Some provisions requested by Council could not be supported such as:

- variation of the standard local State infrastructure clause to include 'Territory infrastructure' as well as 'State infrastructure' when considering the need to have satisfactory arrangements in place for public infrastructure; and
- to include provisions to 'turn off' this provision for certain types of development.

The Department has advised Council that there is an opportunity to have these matters and provisions reconsidered as part of an amendment to the Yass Valley LEP (Parkwood) 2020.

Council indicated on the 14 July 2020 that it was satisfied with the final draft plan and that it could now be made (**Attachment E**).

#### 14. PARLIAMENTARY COUNSEL OPINION

On 14 July 2020 Parliamentary Counsel provided the final Opinions that the draft LEPs could legally be made. This Opinions are provided at **Attachment PC1** (Yass Valley LEP 2013 Amendment 9) and **PC2** (Yass Valley LEP (Parkwood) 2020).

#### 15. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEPs under clause 3.36(2)(a) of the Act because they:

- facilitate a master-planned urban release within NSW lands as a major component of the cross-border community on both sides of the NSW/ACT border;
- confirm and protects the conservation, cultural and landscape values of the land with reference to the Murrumbidgee River and Ginninderra Creek corridors and Ginninderra Falls;
- are consistent with relevant strategic plans;
- address relevant matters raised by agencies and the community as part of the consultation process; and
- are consistent with the Gateway determination (as amended)

The final planning proposal and LEPs are also supported by the Parkwood Urban Release Area Governance Framework signed by the ACT and NSW Governments and Yass Valley Council that creates a framework for the delivery of cross border infrastructure and services.



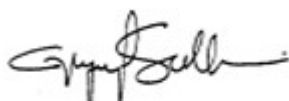
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