



IRF24/2829

Gateway Determination Report – PP-2022-4316

3 McIntosh Street, 2 Day Street and 40-42 Anderson
Street, Chatswood

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Acknowledgment of Country

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

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Table 1 Reports and plans supporting the Planning Proposal

Reports and Plans
Attachment A Planning Proposal Report
Attachment B Resolution of Willoughby City Council on PP-2022-4316 (27 November 2023)
Attachment C Decision of the Sydney North Planning Panel in RR-2023-32 (8 June 2024)
Attachment D Advice of the Willoughby Local Planning Panel on PP-2022-4316 (11 July 2023)

1 Planning Proposal

1.1 Overview

Table 2 Planning Proposal Details

LOCAL GOVERNMENT AREA (LGA)	City of Willoughby
PLANNING PROPOSAL AUTHORITY	Sydney North Planning Panel
NAME	3 McIntosh Street, 2 Day Street and 40-42 Anderson Street, Chatswood
NUMBER	PP-2022-4316
LEP TO BE AMENDED	Willoughby Local Environmental Plan 2012
ADDRESS	3 McIntosh Street, 2 Day Street and 40-42 Anderson Street, Chatswood
DESCRIPTION	SP 2650, SP 76364, SP 1604, and SP 19181
RECEIVED	24/09/2024
FILE NO.	IRF24/2829
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1.2 Objectives of Planning Proposal

The planning proposal (**Attachment A**) contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to amend the affordable housing contribution rate for the site under the Willoughby LEP 2012 from 10% to 7%.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of Provisions

The planning proposal seeks to amend the affordable housing contribution rate for the site shown on the Affordable Housing Map from 10% to 7%.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site Description and Surrounding Area

The planning proposal applies to land at 3 McIntosh Street, 2 Day Street and 40-42 Anderson Street, Chatswood (see **Figure 1**). The site comprises four (4) strata titled residential flat buildings, legally described as SP 2650, SP 76364, SP 1604 and SP 19181. It has a total area of 3,122m² and is zoned MU1 Mixed Use.

The site is in northern part of the Chatswood CBD (see **Figure 2**). The surrounding area is predominately zoned R2 Low Density Residential and MU1 Mixed Use. It is characterised by a mix of freestanding homes, apartment buildings and shop-top housing. St Pius X College is located to the east of the site, across Anderson Street.

On the advice of Willoughby City Council (Council), the proponent has worked to acquire 38 Anderson Street, which is located to the immediate east and south of the site. The planning proposal states that settlement for the acquisition of 38 Anderson Street is scheduled for March 2025. However, 38 Anderson Street is not subject to the planning proposal.



Figure 1 The Site and 38 Anderson Street (Source: Department)

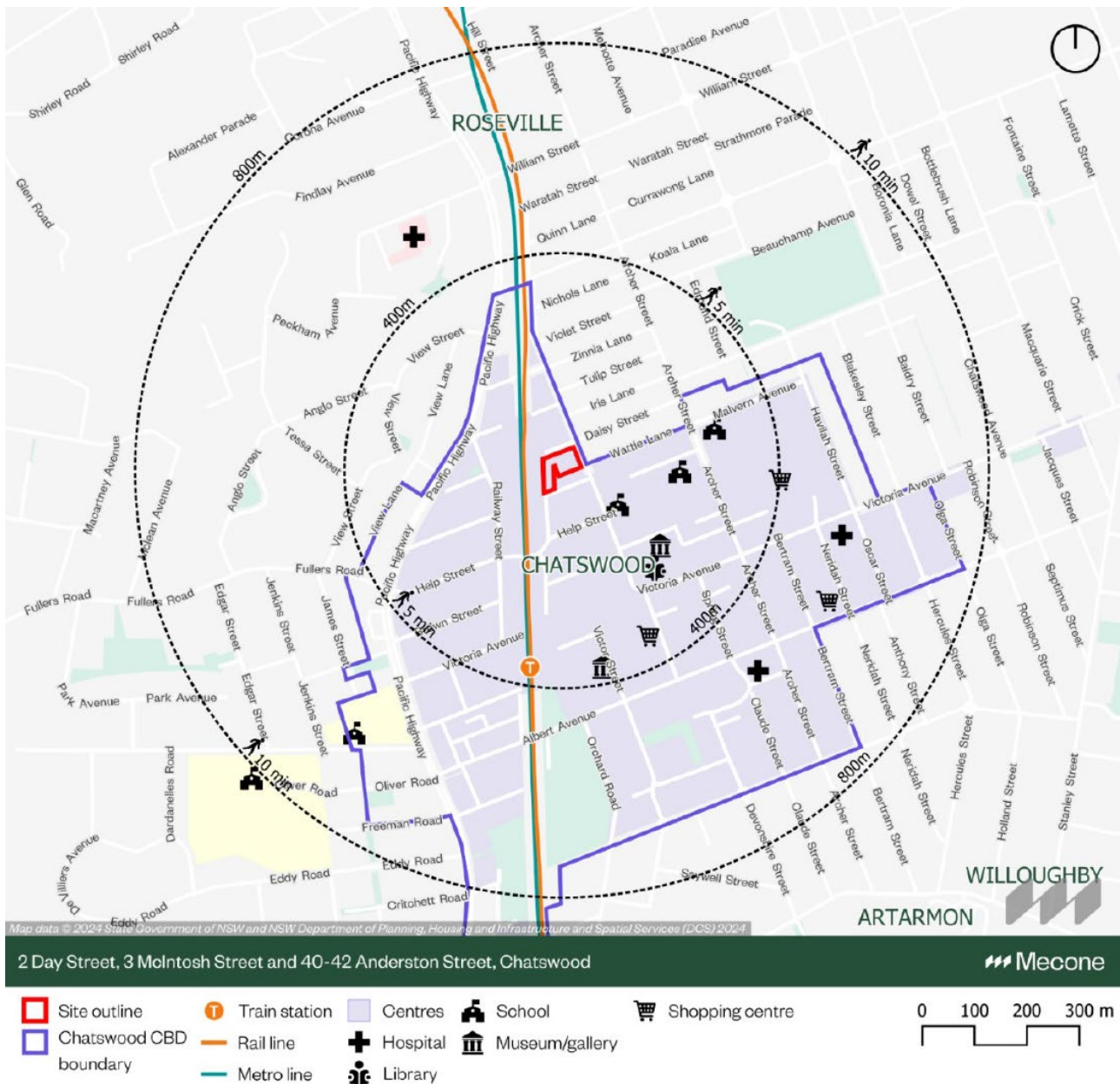


Figure 2 Site Context (Source: Planning Proposal)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Affordable Housing Map in the Willoughby LEP 2012. The existing and proposed Affordable Housing Map are shown in **Figure 3** and **Figure 4**. The mapping is suitable for community consultation.



Figure 3 Current Affordable Housing Map (Source: Planning Proposal)



Figure 4 Proposed Affordable Housing Map (Source: Planning Proposal)

1.6 Background

Table 3 summarises the planning proposal's background.

Table 3 Planning Proposal's Background

Date	Event
22 August 2018	Initial meeting between the proponent and Council regarding the preparation of a planning proposal of the site.
24 December 2021	Gateway determination issued for planning proposal for the comprehensive review of the Willoughby LEP 2012 (PP-2021-6242).

Date	Event
5 March to 7 June 2022	Willoughby Comprehensive proposal is publicly exhibited. It proposed an affordable housing contribution rate of 10% for the subject site, rezoning the site to MU1 Mixed Use, and increases to the maximum building height and FSR.
20 July 2022	A second meeting between the proponent and Council regarding the preparation of a planning proposal for the site.
28 August 2022	A formal pre-lodgement meeting between the proponent and Council.
12 December 2022	Council considers the post-exhibition report for Willoughby Comprehensive and resolves to submit it to the Department for finalisation.
20 December 2022	The proponent lodges the planning proposal on the NSW Planning Portal. It proposes rezoning the site from R3 Medium Density Residential to MU1 Mixed Use, increasing the maximum building height to 90m and the maximum FSR to 6:1, and an affordable housing contribution rate of 4%.
9 March 2023	Council wrote to the proponent advising that any planning proposal lodged after 7 June 2022 with an affordable housing contribution rate below 10% is unlikely to be supported. Council invited the proponent to withdraw the planning proposal.
30 June 2023	The planning proposal for the comprehensive update to the Willoughby LEP 2012 is made.
11 July 2023	The Willoughby Local Planning Panel reviewed the planning proposal and recommended to Council that it not proceed (see Section 3.4).
27 November 2023	Council resolved (Attachment B) to not forward the proponent's planning proposal to the Department for a Gateway determination.
1 December 2023	The proponent submits a rezoning review request to the Department.
29 May 2024	<p>The Sydney North Planning Panel determined that the planning proposal has strategic and site-specific merit and should be submitted for a Gateway determination subject to revisions, including increasing the proposed affordable housing contribution rate from 4% to 7%.</p> <p>In accordance with section 3.32(1) of the <i>Environmental Planning and Assessment Act 1979</i> (the EP&A Act), the Panel as delegate of the Minister determined to appoint itself as the Planning Proposal Authority (PPA) for the planning proposal.</p> <p>The Panel's decision is discussed in further detail in Section 1.6.1.</p>
September 2024	The revised planning proposal is submitted for a Gateway determination.

1.6.1 Rezoning Review RR-2023-32

On 29 May 2024 the Sydney North Planning Panel (the Panel) considered a rezoning review for the planning proposal.

The majority of the Panel determined that the planning proposal had site-specific and strategic merit and should be submitted for a Gateway determination, subject to it adopting an affordable housing contribution rate of 7%.

The Panel's decision is provided at **Attachment C**. An extract of the reasons for the Panel's decision is provided below:

The Panel accepts that the provision of affordable housing had been an apparent point of agreement between the Proponent and Council for this site since 2018 with the Proponent always intending to offer affordable housing at a rate of 4%. The Panel accepts that as late as the last few months of 2022, Council had indicated in writing to the Proponent that a 4% affordable housing rate was the level under consideration.

However, the Panel notes that despite ongoing affordable housing discussions over many years, a misunderstanding and communication lapse between Council and the Proponent meant the Proponent failed to understand the need to formally seek an exemption for the 4% provision and, as a result, the site was not included in a list of 4% sites when Council finalised the list of sites that would benefit from the savings provisions in December 2022.

The Panel also notes Council had encouraged the Proponent to amalgamate 38 Anderson Street and in due course this was achieved. The Panel further notes the Proponent's advice that lodgement of the Planning Proposal had been delayed due to negotiations to amalgamate 38 Anderson Street, however once amalgamation was achieved, that property had not been included in the "Affordable Housing" Planning Proposal before the Panel.

In the circumstances, the Panel majority considers it reasonable to discount Council's 10% rate for this site to 7% reflecting a balance between the need to increase affordable housing and to acknowledge an apparent misunderstanding and an unfortunate lack of clear communication between the Council and Proponent relating to the intended 4% rate.

The majority of the Panel recommended that prior to submitting the planning proposal for a Gateway determination, the planning proposal be revised to:

- Update the proposed affordable housing contribution rate from 4% to 7% on the draft Affordable Housing Map.
- Remove the proposed amendments to the land use zoning, maximum building height and FSR. This was because these amendments to the planning controls had already been implemented as part of the finalisation of PP-2021-6242.

2 Need for the Planning Proposal

The planning proposal is not the direct result of a strategy or study prepared by the Department or Council. It instead responds to issues that arose during the preparation, exhibition and finalisation of the planning proposal for the comprehensive update to the Willoughby LEP 2012 (PP-2021-6242).

Specifically, as identified by the majority of the Panel, a lack of clear communication between the proponent and Council led to a misunderstanding regarding the need or the proponent to formally seek an exemption from the 10% affordable housing contribution rate proposed in PP-2021-6242. The Department agrees with the Panel that a 7% affordable housing contribution rate appropriately balances the need to support the delivery of affordable housing in the LGA and an acknowledgement of the misunderstanding between the proponent and Council.

The planning proposal is the best means of achieving the objectives and intended outcomes of the planning proposal because updating the affordable housing contribution rate for the site to 7% requires an amendment to the Affordable Housing Map in the Willoughby LEP 2012.

3 Strategic Assessment

3.1 Regional Plan

The Greater Sydney Region Plan – A Metropolis of Three Cities (the Region Plan), released by the NSW Government in 2018, sets out the strategic planning vision for Greater Sydney.

The Region Plan aligns land use, transport and infrastructure planning to reshape Greater Sydney as a metropolis of three connected cities: the Western Parkland City, the Central River City, and the Eastern Harbour City. The site is in the Eastern Harbour City.

Under section 3.8 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) a planning proposal is to give effect to the relevant District Plan. By giving effect to the District Plan, the proposal is also consistent with the Regional Plan. Consistency with the District Plan is addressed in **Section 3.2** below.

3.2 District Plan

The site is in the North District. The then Greater Sydney Commission released the District Plan for the North District in March 2018. It contains the planning priorities and associated actions for implementing the Region Plan in the North District.

Section 2.3.2 of the planning proposal addresses the priorities of the District Plan. The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the EP&A Act. **Table 4** assesses the planning proposal against the relevant priorities and actions of the District Plan.

Table 4 Assessment against the District Plan

Planning Priority	Assessment
Providing housing supply, choice and affordability with access to jobs, services and public transport (Priority N5)	Planning Priority N5 seeks to encourage housing supply, choice and affordability, particularly in areas like the Chatswood CBD with good access to jobs, services and public transport. To support the delivery of more affordable housing, the District Plan sets an affordable rental housing target of between 5-10%, subject to viability. The proposed affordable housing contribution rate (7%) is within the target range established by the District Plan.

3.3 Local Plans

The planning proposal's consistency with relevant local plans and endorsed strategies is considered in **Table 5** below.

Table 5 Local Strategic Planning Assessment

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>Council's endorsed LSPS sets out the 20-year vision for land use planning in the LGA. It gives effect to the District Plan at a local level and is informed by strategies prepared Council, including the Community Strategic Plan.</p> <p>Priority 2 of the LSPS is to increase the number of affordable housing units provided across the LGA. To achieve this priority, the LSPS sets a baseline objective of 4% of new residential uplift being provided as affordable housing. The LSPS also sets a target of 7-10% of new residential uplift being provided as affordable housing by 2026.</p> <p>The proposed affordable housing contribution rate (7%) would continue to exceed the baseline objective of the LSPS and is within the range of the 7-10% affordable housing target for 2026. The Department is satisfied that the planning proposal is generally consistent with the LSPS.</p>
Willoughby Housing Strategy	<p>Council's Housing Strategy aims to guide the quantity, location and type of future residential development in the LGA. It recommends that '[n]ew up zoning of land to include an amended Affordable Housing Provision of 7% in the short-term rising to 10% by 2026.' The proposed affordable housing contribution rate is consistent with the rate recommended in Council's Housing Strategy.</p>
Willoughby Affordable Housing Strategy 2020	<p>Council's Affordable Housing Strategy seeks to increase the supply of affordable rental housing available to key and essential workers (on moderate incomes).</p> <p>Outcome 1 of the Affordable Housing Strategy is to increase the supply of affordable rental housing through affordable housing targets and policy. Actions identified to achieve this outcome include increasing the required affordable housing contribution rate for new residential development to 7% by 2023 and 10% by 2026.</p> <p>The proposed affordable housing contribution rate remains consistent with the Affordable Housing Strategy.</p>
Chatswood CBD Planning and Urban Design Strategy	<p>Council's Chatswood CBD Planning and Urban Design Strategy 2036 (Chatswood CBD Strategy) aims to guide future development in the Chatswood CBD. It informed the comprehensive update to the Willoughby LEP 2012 (PP-2021-6242) in 2021. The Chatswood CBD Strategy states that '[a]ffordable housing is to be provided within the maximum FSR and throughout a development rather than in a cluster.'</p> <p>The planning proposal would not alter how floor space used for the purposes of affordable housing is calculated when determining the FSR of a development, or where in a development affordable housing is located. This would be determined as part of any future DA. The planning proposal is therefore consistent with the Chatswood CBD Strategy.</p>

3.4 Local Planning Panel Recommendation

The Willoughby Local Planning Panel (LPP) considered the planning proposal on 11 July 2023. It advised that the planning proposal should not be forwarded to the Department for a Gateway determination because while it 'mostly meets the strategic framework it has failed to incorporate the increased affordable housing provision of 10%.'

The Willoughby LPP also noted:

- All landowners were notified of the increased affordable housing provision to 10% during the exhibition of the planning proposal for the comprehensive review of the Willoughby LEP 2012 (between March and June 2022).
- The planning proposal was not included on the savings list determined by Council at its meeting in December 2022.

The Willoughby LPP's advice is provided at **Attachment D**.

3.5 Section 9.1 Ministerial Directions

Table 6 provides an assessment of the planning proposal's consistency with the relevant section 9.1 Directions issued by the Minister for Planning and Public Spaces.

Table 6 Local Strategic Planning Assessment

Directions	Consistency	Reasons for Consistency or Inconsistency
Focus Area 3: Biodiversity and Conservation		
3.10 Water Catchment Protection	Inconsistent, but minor and justified	<p>The Direction seeks to protect, maintain and enhance the environmental quality of certain regulated water catchments. The Direction applies because the planning proposal applies to land within the Sydney Harbour Catchment under the Biodiversity and Conservation SEPP.</p> <p>The planning proposal has not addressed consistency with the Direction.</p> <p>However, inconsistency with the Direction is considered minor and justified given the planning proposal would not rezone any land, change the range of permissible uses, or increase the overall intensity of development on the site. It would have no impact on the Sydney Harbour Catchment.</p>
Focus Area 4: Resilience and Hazards		
4.5 Acid Sulfate Soils	Inconsistent, but minor and justified	<p>The Direction requires that planning proposals for land identified as having a probability of containing acid sulfate soils be supported by an acid sulfate soils study.</p> <p>The Direction applies because the site is identified as having a probability of containing acid sulfate soils (Class 5).</p> <p>While an acid sulfate soils study has not been prepared, inconsistency with the Direction is considered minor and justified given:</p> <ul style="list-style-type: none"> • The planning proposal would not rezone any land, change the range of permissible uses, or increase the overall intensity of development on the site. • The extent of development in the area and the associated difficulties of carrying out further testing. • All future DAs will be required to consider the presence of acid sulfate soils in accordance with clause 6.1 of the Willoughby LEP 2012.

Directions	Consistency	Reasons for Consistency or Inconsistency
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Focus Area 5: Transport and Infrastructure

5.1 Integrating Land Use and Transport	Yes	<p>This Direction applies to the planning proposal as it seeks to alter a provision which is located on land zoned for residential and employment purposes.</p> <p>Changing the affordable housing rate will not impact the permissible land uses or density for the site and is therefore unlikely to generate any additional traffic impacts.</p> <p>The Department is satisfied that the proposal is consistent with this Direction.</p>
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Focus Area 6: Housing

6.1 Residential Zones	Yes	<p>The Direction aims to encourage a variety and choice of housing types, make efficient use of existing infrastructure and services, ensure that new housing has appropriate access to infrastructure and services, and minimise the impact of residential development on the environment and resource lands. The Direction applies because the site is zoned MU1 Mixed Use.</p> <p>The planning proposal is consistent with the Direction because it would have no effect on the provision of housing on land zoned MU1 Mixed Use.</p>
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Focus Area 7: Industry and Employment

7.1 Employment Zones	Yes	<p>The Direction aims to encourage employment growth in suitable locations, support the viability of identified centres, and protect industrial and employment lands. The Direction applies because the site is zoned MU1 Mixed Use. The planning proposal is consistent with the Direction because it would have no effect on employment growth, employment land, or the viability of identified centres, including the Chatswood CBD.</p>
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3.6 State Environmental Planning Policies

The planning proposal is consistent with all relevant State Environmental Planning Policies (SEPPs) as discussed in **Table 7** below.

Table 7 Consistency with relevant SEPPs

SEPP	Consistent	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation) 2021	Yes	The site is in the 'Sydney Harbour Catchment' under the Biodiversity and Conservation SEPP. The planning proposal is consistent with the SEPP and would not affect the operation of provisions relating to development in the Sydney Harbour Catchment. Any future development applications for the site will need to consider the requirements of the SEPP.
SEPP (Housing) 2021	Yes	The planning proposal does not contain any provisions that would impede the operation of the Housing SEPP.

SEPP	Consistent	Reasons for Consistency or Inconsistency
SEPP (Precincts – Eastern Harbour City) 2021	Yes	The planning proposal does not seek any amendments that would affect the operation of the SEPP.

4 Site-Specific Assessment

The Department's assessment of the potential environmental, social, economic and infrastructure impacts of the planning proposal is provided in **Table 8**.

Table 8 Assessment of Potential Environmental, Social, Economic and Infrastructure Impacts

Impact	Assessment
Environmental	The planning proposal is administrative in nature and would not result in any environmental impacts or adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats. This is because the planning proposal would not rezone any land, change the range of permissible uses, or increase the overall intensity of development in the Chatswood CBD. Further consideration of potential biodiversity impacts will occur as part of any future DAs.
Social and Economic	<p>The planning proposal would reduce the amount of affordable housing provided on-site as part of future development and/or the monetary contribution made by a proponent towards the provision of affordable housing elsewhere in the LGA (if affordable housing was not being provided on-site).</p> <p>However, as discussed in Section 2, the Department agrees with the Sydney North Planning Panel's decision that the proposed affordable housing contribution rate strikes an appropriate balance between the need to support the delivery of affordable housing in the LGA and an acknowledgement of the misunderstanding between the proponent and Council.</p> <p>The Department also notes that the proposed affordable housing contribution rate is generally consistent with and in some cases exceeds the affordable housing targets in the District Plan and Council's Local Strategic Planning Statement, Local Housing Strategy, and Affordable Housing Strategy. This is discussed in further detail in Section 3.2 and 3.3.</p>
Infrastructure	The planning proposal, which relates solely to the affordable housing contribution rate for new development on the site, would not affect or generate any additional demand for infrastructure.

5 Consultation

5.1 Community

The planning proposal is categorised as a 'standard' under the LEP Making Guidelines (August 2023). Accordingly, a public exhibition period of 20 working days is recommended. This forms a condition of the Gateway determination.

5.2 Agencies

The planning proposal does not specifically identify which public authorities and government agencies will be consulted. However, consultation with public authorities and government agencies is not required at this stage because the planning proposal would not:

- Rezone any land, change the range of permissible uses, or increase the overall scale and intensity of development in the Chatswood CBD.
- Generate heritage, traffic, flooding, biodiversity, infrastructure, or other concerns requiring consultation at the planning proposal stage.

Consultation with relevant public authorities and government agencies will occur as part of any future DAs.

6 Timeframe

The LEP Making Guideline (August 2023) establishes maximum benchmark timeframes for different categories of planning proposals. The planning proposal is categorised as ‘standard’.

Given the complexity of the planning proposal, an 8-month timeframe for completing the LEP is considered appropriate. A recommended LEP completion date of 29 August 2025 is included in the Gateway determination.

7 Local Plan-Making Authority

As the Sydney North Planning Panel is the Planning Proposal Authority, the Department as delegate of the Minister is to be the local plan-making authority (LPMA) for the planning proposal.

8 Assessment Summary

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

- Inconsistency with section 9.1 Directions 3.10 Water Catchment Protection and 4.5 Acid Sulfate Soils is justified in accordance with the terms of each Direction.
- It would help address an issue that arose during the preparation, exhibition and finalisation of the planning proposal for the comprehensive update to the Willoughby LEP 2012 (PP-2021-6242).
- It would not result in any adverse social, economic, infrastructure or environmental impacts that cannot be appropriately addressed as part of future DAs.
- It is generally consistent with the strategic planning framework, including the Region Plan, District Plan and Council’s Local Strategic Planning Statement, Local Housing Strategy and Affordable Housing Strategy.
- An amendment to the Willoughby LEP 2012 is the best means of achieving the objectives and intended outcomes of the planning proposal.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Direction 3.10 Water Catchment Protection and 4.5 Acid Sulfate Soils are justified in accordance with the terms of the Directions.

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

The following conditions are recommended to be included on the Gateway determination:

1. The planning proposal should be made available for community consultation for a minimum of 20 working days.
2. No consultation is required with public authorities or government agencies under section 3.34(2)(d) of the EP&A Act.

The recommended completion date for the LEP is on or before 29 August 2025.



23 January 2025

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23 January 2025

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