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Gateway determination report – PP-2022-564

Canada Bay Local Character Areas

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Acknowledgment of Country

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

Contents

1	Planning proposal.....	1
1.1	Overview.....	1
1.2	Objectives of planning proposal	1
1.3	Explanation of provisions	1
1.4	Site description and surrounding area.....	3
1.5	Mapping.....	3
1.6	Background	3
2	Need for the planning proposal	5
3	Strategic assessment	6
3.1	Region Plan	6
3.2	District Plan	6
3.3	Local Plans	7
3.4	Section 9.1 Ministerial Directions	8
3.5	State environmental planning policies (SEPPs)	10
3.5.1	State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).....	10
3.6	Standard Instrument (Local Environmental Plans) Order 2006	10
4	Site-specific assessment	10
5	Assessment summary	11
6	Recommendation.....	11

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal – October 2020
Draft Local Character Statements
Draft Local Character Area Maps

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Canada Bay
PPA	City of Canada Bay Council
NAME	Local Character Areas Planning Proposal
NUMBER	PP-2022-564
LEP TO BE AMENDED	Canada Bay Local Environmental Plan 2013
ADDRESS	Various areas within the LGA
RECEIVED	23/02/2022
FILE NO.	IRF22/2666
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 contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to maintain attributes of areas with recognised distinctive local character.

The intended outcome of the planning proposal is that character is maintained in 'Local Character Areas' that have been identified as having established and unique character that is to be conserved or protected.

The objectives of this planning proposal are clear.

1.3 Explanation of provisions

The planning proposal seeks to amend the Canada Bay LEP 2013 to introduce a new local character clause and map. It will establish 11 'local character areas' and require that character statements for each area are a consideration for development applications proposed in the respective areas.

As shown in **Figure 1** the proposed 11 Local Character Areas (LCAs) include:

- Concord West (CW)
- Concord –North Strathfield (CNS)
- Concord North (CN)

- Concord East (CE)
- Canada Bay (CB)
- Wareemba West (WW)
- Russell Lea (RL)
- Croker Estate (CRE)
- Five Dock North (FDN)
- Five Dock (FD), and
- Rodd Point (RP).

The planning proposal notes the intent of the proposed amendments is for the following reasons:

- To give statutory weight to stand-alone Local Character Statements for each of the above LCAs.
- To maintain the unique local character of the LCAs
- Build the community's trust in the planning system with respect to the government's announcement of the NSW Housing Affordability Strategy in June 2017, which cited Government policy that Councils will protect the character of important local areas while supporting housing supply.
- Inform any potential future development proposals of Council's intention to protect areas of local character from significant change.

Between November 2020 to January 2021, the Department exhibited an Explanation of Intended Effect (EIE) for local character which proposed a standardised LEP model clause referring to Local Character Areas Statements. This would allow all councils to elect to adopt this into their LEPs based on suitable justification.

Submissions from the exhibition revealed mixed feedback on the local character clause, such that consensus could not be reached on the introduction of a model clause into the standard instrument LEP. As a result, the Department determined that policy changes for a local character clause to be included in the standard instrument LEP would not be progressing further.

As there is no Department-endorsed statutory pathway or policy to include a local character clause in LEPs, council's proposal to introduce a local character overlay by the subject planning proposal is not supported at this time. Despite this, consideration of local character is important for some areas and Council should consider using its development control plan (DCP) to ensure local character is considered when designing and assessing development in areas identify to have local character.

On this basis the Department is unable to issue a Gateway determination for the planning proposal to proceed on the basis that there is not an endorsed statutory pathway or policy to regulate or refer to local character in LEPs. This is also consistent with a recent determination of the Independent Planning Commission (IPC) in their consideration of a gateway review for the draft Randwick Comprehensive LEP (see **Section 1.6.3** further in this report).

It should be noted that part of the intent for this planning proposal was the expectation that the application of the Low-Rise Medium Density Housing Code would be excluded from applying where the local character areas were to be applied. Council has previously raised concerns with the application of the Code to permit for low rise medium density development that it sees as being inconsistent with the local character expectations.

1.4 Site description and surrounding area

The planning proposal applies to certain areas within the Canada Bay LGA identified in the planning proposal (**Attachment A**). **Figure 1** below provides an extract from the planning proposal of the proposed character areas.

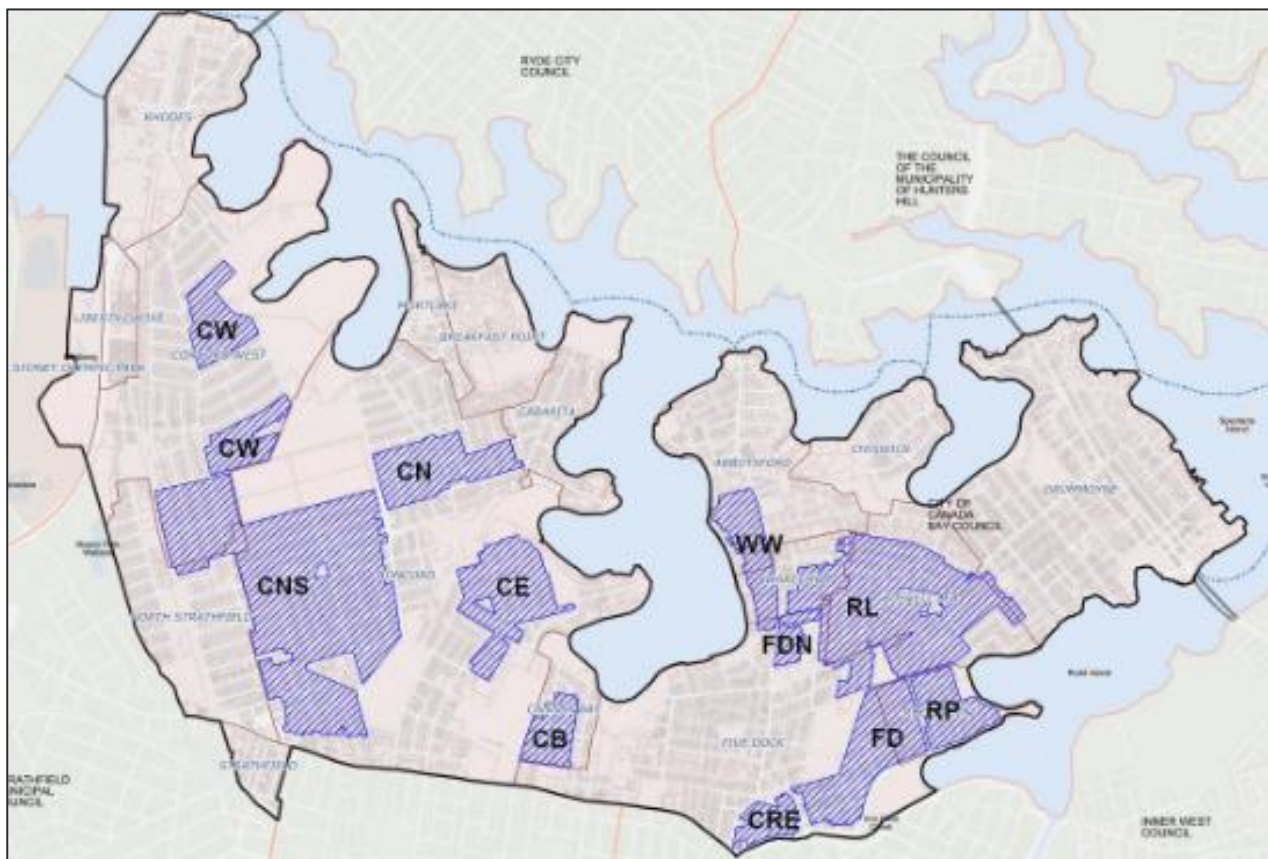


Figure 1 Proposed local character areas (source: City of Canada Bay Council)

1.5 Mapping

The planning proposal seeks to introduce a new local character area maps into the LEP comprising seven map sheet tiles (**Attachment Draft LCA Maps**).

1.6 Background

Council has previously submitted planning proposals to include local character provisions in the Canada Bay LEP 2013.

A brief timeline of the current and previous proposals is provided in **Table 3**.

Table 3 Brief timeline of the current and previous proposals

Date	
12 December 2019	Council submitted a planning proposal to implement the Canada Bay Local Strategic Planning Statement (LSPS). It included a proposal to introduce LCAs and an exemption to Part 3 of the State Environmental Planning Policy (Exempt an Complying Development Codes) 2008 (Codes SEPP).
28 April 2020	A Gateway Determination was issued for the planning proposal to implement the LSPS with a condition to delete the proposed amendment relating to Local Character Areas including the reference to a proposed exclusion from the Codes SEPP. Key reasons for the Department not supporting the proposed 'interim' LCAs were the policy certainty regarding the appropriate LEP mechanism and insufficient information to satisfy Part 2 – Character Assessment Toolkit in the Local Character and Place Guideline.
28 October 2020	Council submitted a planning proposal (PP-2020-1157) to map local character areas and seek an exemption to the Codes SEPP for these areas.
12 November 2020 to 29 January 2021	The Department exhibited an explanation of intended effect (EIE) for a standardised approach to local character. This will not be progressing further. See below for more information.
December 2020	The Department's Policy team identified the planning proposal was inconsistent with the exhibited EIE and there was no mechanism to exempt the LCAs from the Codes SEPP.
December 2020	The Department wrote to Council advising the planning proposal could not be accepted in its current form.
22 March 2022	Previous planning proposal (PP-2020-1157) was withdrawn.
24 February 2022	Council submitted the current revised planning proposal seeking to introduce a new clause and local character area maps to the LEP.
25 February 2022	The Department met with Council to provide an update on local character and advise that the local character policy work would not be progressing.
10 June 2022	In correspondence from the Department's Deputy Secretary NSW Planning, Council was advised that consensus could not be reached on the introduction of a model clause into the standard instrument LEP. As such, the best way forward is for each council to use its DCP to ensure local character is considered in development applications. The letter offered to work with Council to include local character clauses in its DCP, including providing council with advice and financial assistance.

1.6.1 Local character in the NSW Planning System

The Local Character Planning Circular released in January 2018 flagged preparing amendments to the Standard Instrument LEP to establish overlays for additional considerations of local character in areas of significant.

The Department proposed an option for changes to the and exhibited an EIE between 12 November 2020 to 29 January 2021. The exhibited option included a draft local character model clause and map overlay in the EIE and a draft framework for requesting an exemption from Part 3B Low Rise Housing Code but only in limited areas.

Despite the exhibition proposing to adopt LCA into LEPs amendments to the Standard Instrument LEP for LCA provisions will not be progressing further. However, councils can continue to provide guidance on local character through their LSPSs and development control plans (DCPs).

LSPSs and DCPs support local character by setting the overall context of local areas. They also provide planning controls that ensure local character is considered in all new developments.

1.6.2 Independent Planning Commission advice on Gateway Review relating to proposed local character provisions in the Randwick LGA

On 16 February 2022 the IPC considered a Gateway Review in relation to the Randwick Comprehensive LEP Planning Proposal (PP-2021-4267). Proposed local character provisions were one of the matters identified for review.

The Department's Gateway determination included a condition to remove the proposal for local character provisions on the basis that currently there is not Department-endorsed statutory pathway to include local character in LEPs and that an exclusion from the Codes SEPP was not supported. Condition 1(c) of the Gateway determination stated:

'Remove the proposed local charter provision, mapping and local character statement.'

The IPC supported the Department's position, stating:

'.....given that at this time there is no Department-endorsed statutory pathway to include Local Character Areas within the LEP and that a Development Control Plan can adequately provide for local character, the Commission advises that the Gateway Determination should not be amended to delete Gateway condition 1(c).'

Consistent with the IPCs findings, the Department is unable to support the planning proposal on the basis there is not an endorsed statutory pathway or policy to regulate or refer to local character in LEPs. A Development Control Plan can adequately provide for local character and this

2 Need for the planning proposal

Council has identified that local character is a priority in the Canada Bay Local Strategic Planning Statement (LSPS), which is further identified by Canada Bay Local Housing Strategy (LHS) as discussed in Section 3.3 below.

The Department acknowledges that Council has undertaken considerable work to prepare this planning proposal. This was prepared in anticipation of the draft policy being implemented. However as this is now no longer proceeding there is no recognised mechanism to include local character provisions into LEPs or include a model provision in the Standard Instrument LEP. .

The basis for this is that consensus could not be reached on the way a model clause for local character could be best introduced and implemented in an LEP. A fact of this was defining local character is quite detailed and has traditionally been addressed in DCPs. As such, the best way forward is for each council to use its DCP to ensure local character is considered in development applications.

Accordingly, the planning proposal is not the best mechanism for achieving the objective of the planning proposal to maintain the character of areas with recognised distinctive local character.

To effectively provide guidance and put in place planning controls that are consistent with the strategic vision and desire future character of a neighbourhood Council should consider an amendment to its DCP.

For these reasons the proposal to amend the LEP and is not supported at this time. This is discussed further in the assessment below.

3 Strategic assessment

3.1 Region Plan

The Greater Sydney Commission released the *Greater Sydney Region Plan, A Metropolis of Three Cities* on 18 March 2018. The plan is built on a vision of three cities where most residents live within 30 minutes of their jobs, education and health facilities, services and great places. The Region Plan identifies great places recognise local characteristics and the qualities people value; however, does not specify or provide guidance on local character planning controls and does not specify a mechanism for introducing local character planning controls.

The objectives of the planning proposal are generally consistent with the Region Plan which recognises the importance of local character in achieving good planning outcomes. However, as discussed above, consensus could not be reached on the introduction of a model clause into the standard instrument LEP and DCPs have to date been able to adopt and apply controls and objectives that will apply to future development relating to local character. As such, Council should consider using its DCP to ensure local character is considered in development applications.

3.2 District Plan

The site is within the Eastern City District and the Greater Sydney Commission released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets. The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The objective of the planning proposal is generally consistent with the priorities for local character which aim to provide enjoyable and attractive recognising the distinctive and valued combination of characteristics that contribute to local identity. However, the District Plan does not specify a mechanism for introducing local character planning controls.

As discussed above, consensus could not be reached on the introduction of a model clause into the standard instrument LEP. As such, Council should consider using its DCP to ensure local character is considered in development applications.

3.3 Local Plans

The proposal states that it is consistent with the local plans and endorsed strategies discussed in the table below:

Table 6 - Local strategic planning assessment

Local Strategies	Justification
Community Strategic Plan - Your Future 2030 (CSP)	<p>The CSP identifies directions including developing a balanced housing mix; ensuring high quality housing and renewal; and considering impacts on the character of the area. The planning proposal is relevant to the following CSP Goals and delivery strategies:</p> <p><i>Goal 1.3: Our sense of place and of belonging is strong with our diversity respected and celebrated and local heritage and character promoted in friendly village neighbourhoods and vibrant and prosperous centres.</i></p> <p><i>Goal 4.2. High quality sustainable urban design results in innovative development sensitive to existing local character.</i></p> <p><i>Delivery strategy 4.2.1. Provide Strategic and Land Use Planning to ensure the built and natural environment is highly liveable with quality and sustainable development incorporating best practice design.</i></p> <p>As discussed above, the planning proposal to introduce local character provisions into the LEP is not supported at this time.</p> <p>Council should consider using its DCP to ensure local character is considered when assessing relevant development applications.</p>
Canada Bay Local Strategic Planning Statement (2020)	<p>The LSPS gives effect to District Plan priorities. The planning proposal addresses the Priority 7 <i>Create vibrant places that respect local heritage and character</i>. In particular, the actions associated with Planning Priority 7 include the following:</p> <p><i>7.2 Seek DPIE endorsement of Local Character Statements, including desired future character statements, as part of the endorsement of the Local Housing Strategy. These should consider:</i></p> <ul style="list-style-type: none"> <i>the staged introduction of Local Character Statements to align with infrastructure delivery;</i> <i>areas identified for change, including Planned Precincts and other localities undergoing renewal; and</i> <i>areas identified for investigation on Map 10, due to having been identified as having distinctive urban form and character to be retained and protected (Local Character Areas).</i> <p><i>7.3 Seek an exclusion for Complying Development under the Housing Code and Low Rise Medium Density Housing Code in Local Character Areas.</i></p> <p>The objective and intended outcome of the planning proposal is generally consistent with the priorities and actions of the LSPS.</p> <p>However, as discussed above, consensus could not be reached on the introduction of a model clause into the standard instrument LEP. Accordingly, the planning proposal is not supported at this time. <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> is discussed at Section 3.5 of this report.</p>

Local Strategies	Justification
	Council should consider using its DCP to ensure local character is considered in development applications.
City of Canada Bay Local Housing Strategy	<p>The Canada Bay Local Housing Strategy (LHS) was endorsed by the Department on 10 May 2021 subject to conditions.</p> <p>Specifically, this approval had the following conditional requirement:</p> <p><i>5. The local character areas identified within the LHS are pending the Department's assessment of Council's Local Character Area planning proposal and finalisation of the draft standard instrument clause for Local Character Areas and are therefore not supported at this stage.</i></p> <p>Therefore, the application of local character provisions into councils' LEP was subject to the finalisation of this policy being progressed. Hence as this policy is not being progressed at this time the Department is unable to support council's proposal for provisions in council's LEP.</p> <p>Accordingly, the planning proposal is not supported. Despite this, council should consider amending its DCP to incorporate local character objectives and provisions that should be considered by relevant development applications.</p>

3.4 Section 9.1 Ministerial Directions

The planning proposal is broadly consistent with the section 9.1 Directions and any inconsistencies are discussed below:

Table 7 - 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	<p>Direction 1.1 gives legal effect to the vision, land use strategy, goals, directions and actions contained in the Regional and District Plans.</p> <p>As discussed in Section 3.1 and 3.2, whilst the objective of the planning proposal is generally consistent with the aims, objectives and planning priorities in the plans, there is no mechanism for local character provisions to be included in the Standard Instrument LEP.</p>
4.1 Flooding	Yes	<p>Direction 4.1 aims to ensure appropriate consideration of flood prone land in line with government policies and plans when a planning proposal seeks to create, remove or alter a zone or a provision that affects flood prone land.</p> <p>Parts of the LGA are affected by flooding, however the proposal is a policy change relating to local character and would not result in any additional impact with respect to flooding.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.5 Acid sulfate soils	Yes	<p>Direction 4.1 aims to avoid significant adverse environmental impacts from land that may contain acid sulfate soils.</p> <p>This planning proposal applies to various areas within the Canada Bay LGA which are affected by acid sulfate soils.</p> <p>The proposal will not result in any greater risk to current or future residents of these areas and any development would be required to consider the soil typology as required.</p>
6.1 Residential zones	Yes	<p>Direction 6.1 aims to encourage variety and choice of housing types for existing and future housing needs and seeks to make use of existing infrastructure and services to ensure new housing has appropriate access to infrastructure and services.</p> <p>The planning proposal states that it does not contain provisions that contradict or would hinder application of this direction:</p> <p><i>The planning proposal seeks to ensure that developments in the proposed Local Character Areas respond sympathetically to the established urban form and characteristics of the Precinct, without restricting or limiting the development of alternative, but compatible, new housing types. Council's LSPS proposes to concentrate future housing diversity and housing intensification activity within proposed housing diversity precincts in the vicinity of existing and planned rail stations.</i></p> <p>To be consistent with the directions proposals must encourage housing choice in suitably serviced areas and must not contain provisions contrary to this.</p> <p>The application of the local character area provisions do not themselves restrict residential development; however, the expectation was that the LCA provision would enable exclusion of the Low Rise Medium Density Code from applying to those nominated areas. The consequence of this reduces the ability for suitable development to be approved under a Complying Development Certificate pathway, which is a more streamlined approval process.</p> <p>The proposed draft Local Character Statements focus largely on single detached housing, and do not give specific regard to other housing typologies which may exist or be proposed within the LCAs. Again, whilst this application of the local character area provisions do not themselves restrict other forms of residential development, it does not clearly provide guidance on whether alternative housing options would be impacted by the LCAs.</p>

3.5 State environmental planning policies (SEPPs)

An assessment of the planning proposal against relevant SEPPs has been undertaken and is discussed in the table below.

3.5.1 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)

The intent of the Codes SEPP is to simplify the planning process and enable low impact development subject to meeting particular requirements.

Council is seeking to introduce the LCAs into the LEP with the intention of applying for an exemption from the provisions of the Code SEPPs Low Rise Housing Diversity Code applying to the LCAs via a subsequent planning proposal. Council considers this critical to supporting the intention of the planning proposal to protect areas of local character.

The planning proposal does not specifically contain provisions which would impact the application of the Code SEPP to the identified LCAs. However, the Department notes Council's intent in this regard (see Table 6).

Utilising local character as a basis to exclude areas of the LGA from the application of the Codes SEPP will not be supported by the Department. As per the IPC's findings on the draft Randwick Comprehensive LEP, allowing an exemption from the Codes SEPP for local character area would set an undesirable precedent that would undermine the aims of the Policy.

The planning proposal has not clearly justified that the Low Rise Housing Code has or will adversely impact those areas nominated for draft LCAs. It is noted that in the period September 2020 to February 2022 (17 months, noting the proposal was lodged in February 2022), the Canada Bay LGA has only had 27 dual occupancy developments and 1 terrace house development approved via the Low Rise Housing Diversity Code. These figures relate to the entire LGA and are not specific to the LCAs part of this proposal. Accordingly, it is considered that the uptake of the Low Rise Housing code and its potential environmental planning impacts to the draft LCAs is minimal.

3.6 Standard Instrument (Local Environmental Plans) Order 2006

This Order prescribes the form and content of a principal local environmental plan.

The planning proposal seeks to identify certain areas within the Canada Bay LGA identified in the planning proposal as local character areas in the Council's standard instrument LEP (**Attachment A**). There is currently no Department-endorsed statutory pathway or policy to include local character in LEPs. Accordingly, the proposal is inconsistent with the Order and the Standard Instrument – Principal Local Environmental Plan.

4 Site-specific assessment

The planning proposal applies to eleven areas in the Canada Bay LGA as identified in **Figure 1**. The proposal seeks to make policy amendments in relation to local character.

The proposal, given its nature, is unlikely to have natural or built environment impacts or generate additional infrastructure requirements.

The proposal's objective of protecting local character is a positive social outcome in that it seeks creating great places and support local identity. However, it is considered that the potential reduction in development capacity and the impacts on housing choice in these areas has not been

adequately addressed in the planning proposal. The proposal also has the potential to create adverse economic outcomes for property owners, businesses or the local economy.

5 Assessment summary

The proposal is not supported as there is no Department-endorsed statutory pathway or policy to include local character provisions in LEPs.

The Department has been considering mechanisms and tools available to councils to incorporate the consideration of local character into strategic planning since 2018. In 2019, the Department released a *Local Character and Place Guideline and Discussion Paper – Local Character Overlays*, which explored an option for introducing local character overlays into the Standard Instrument LEP, but this will not be proceeding at this time.

Additionally, the Department does not support local character as a basis for any future exclusion of areas from the application of the Codes SEPP. It is noted that no other council has been granted an exclusion on these grounds and that the uptake of Low Rise Housing in the Canada Bay LGA has been minimal from September 2020 to February 2022, hence the proposal for the purposes of excluding the Code is not reasonable.

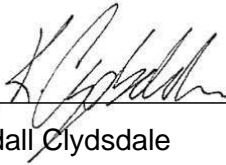
The Department is unable to issue a Gateway determination for the planning proposal to proceed on this basis.

The Department acknowledges the intent to conserve local character and recommends that the work to underpin this proposal be implemented and incorporated into council's DCP. This approach will still allow for consideration of local character as key design and development matter to ensure that the development is compatible with the corresponding neighbourhood. A DCP can be more detailed and flexibly applied to development proposals, based on their characteristics and merit.

6 Recommendation

It is recommended the proposal not proceed for the following reason:

- There is no Department-endorsed statutory pathway or policy to include local character in LEPs.
- The Independent Planning Commission has previously concurred with the Department's position that there is no Department-endorsed statutory pathway or policy to include local character in LEPs.
- Issuing a Gateway determination would be inconsistent with the Department's endorsement of the Canada Bay Local Housing Strategy.
- Council is seeking to introduce the LCAs into the LEP with the intention of applying for an exemption from the Low Rise Housing Diversity Code in the future. The Department does not support local character as a basis for any future exclusion of areas from the application of the Codes SEPP.
- A Development Control Plan can adequately provide for local character controls in the Canada Bay LGA without an amendment to the LEP. A Development Control Plan also allows greater flexibility for proponents and Council in applying appropriate local character provisions for specific development types.



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9 August 2022 (Date)

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