



IRF25/57

Plan finalisation report – PP-2024-270

Sutherland Shire Local Environmental Plan (Map
Amendment No 5) - 78 Port Hacking Road, Sylvania

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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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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Sutherland Shire Local Environmental Plan (LEP) 2015 (Map Amendment No 5)

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal applies to land at 78 Port Hacking Road, Sylvania
Type	Site
Council / LGA	Sutherland Shire

The site is known as 78 Port Hacking Road, Sylvania and legally described as Lot 1, DP 1284163. It is a recently registered parcel of land on the eastern side of Port Hacking Road. The site is an irregularly shaped lot, encompassing a total site area of approximately 926m².

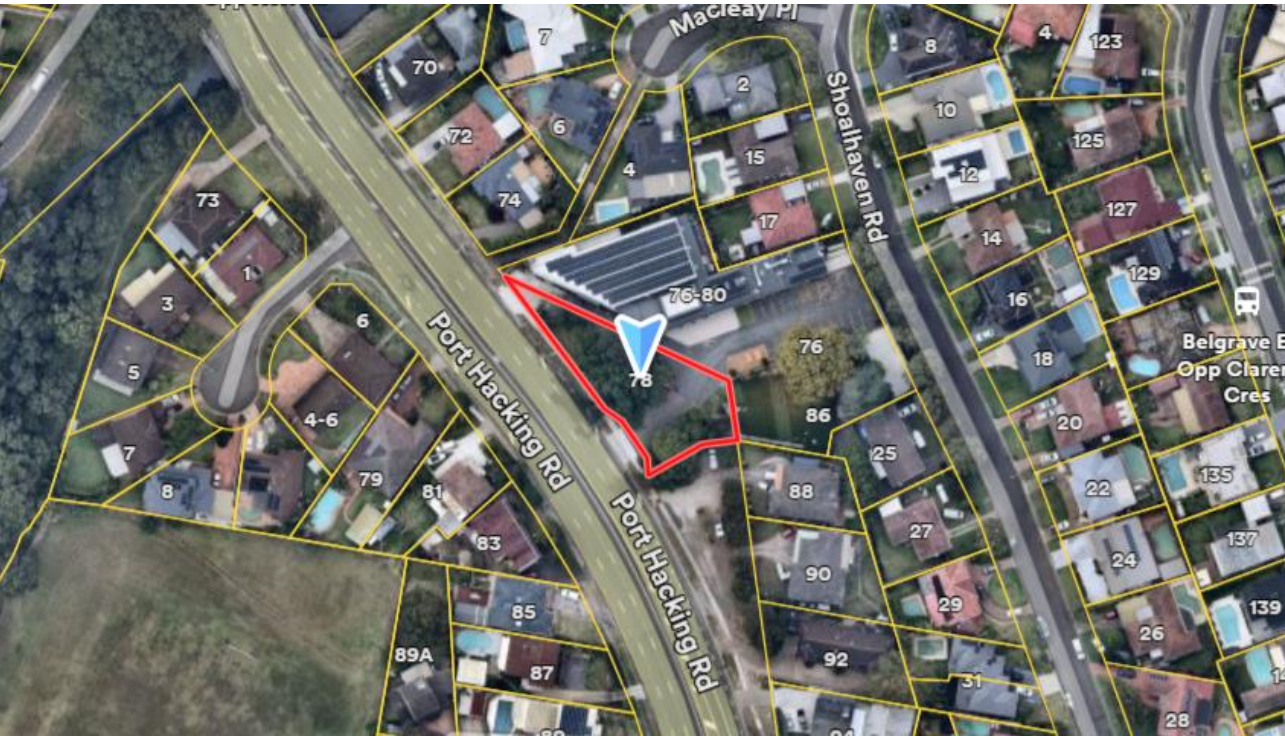


Figure 1 Subject site (outlined in red) (Source: Nearmap)

1.1.3 Purpose of plan

The plan seeks to amend the Sutherland Shire LEP 2015 to rezone land at 78 Port Hacking Road, Sylvania and introduce associated development standards.

As noted in the Department’s Gateway determination report, the intended outcome of the planning proposal is to facilitate the formal use of the site as ancillary car park for the adjoining Coptic Church, following the sale of the land by Council.

The table below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	SP2 Infrastructure (Classified Road)	R2 Low Density Residential
Maximum height of the building	N/A	8.5m
Floor space ratio (FSR)	N/A	0.55:1
Minimum lot size	N/A	550m ² *
Landscaped area	N/A	35%

*Note - A discrepancy has been identified in the planning proposal between the Explanation of Provisions and the draft maps regarding the proposed lot size standard. Council has confirmed that the “700m²” shown on page 4 of the planning proposal is a typographical error, and the proposed lot size standard should be 550m² as per the draft map shown on page 20. As outlined in the planning proposal, Council’s intent is that the land will have the same lot size, FSR, height and landscaped area standards as typically applied to Zone R2.

1.1.4 State electorate and local member

The site falls within the Miranda state electorate. Eleni Petinos MP is the State Member. The site falls within the Cook federal electorate. Simon Kennedy MP is the Federal Member. To the team’s knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required. There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 4 April 2024 determined that the proposal should proceed subject to conditions, including the following specific updates to the planning proposal:

- provide further explanation to justify consistency with s9.1 Direction 4.1 Flooding and address the *Flood Risk Management Manual (2023)* and 2022 Flood Inquiry
- include a Preliminary Site Investigation undertaken by a suitably qualified professional to determine whether the site is suitable for residential zoning, and update discussion to address consistency with s.9.1 Direction 4.4 Remediation of Contaminated Land
- provide additional information on the closure of the road reserve in accordance *with the Roads Act 1993* and address consistency with section 9.1 Direction 5.2 Reserving Land for Public Purposes.

As discussed further in Section 4.1 of this Report, Council has submitted documents and supporting information as part of the finalisation package, addressing matters outlined in the Gateway conditions.

Council has publicly exhibited the planning proposal and considered the submissions received. Pursuant to *Section 3.34(8) of the Environmental Planning and Assessment Act 1979*, the draft LEP can be made.

In accordance with the Gateway determination, the proposal is due to be finalised on 28 February 2025.

3 Public exhibition and post-exhibition changes

The Council Report of 25 November 2024 notes that the planning proposal was publicly exhibited from 6 August 2024 to 2 September 2024 (a total of 20 working days), in line with the minimum period required by Condition 2 of the Gateway determination.

A total of nine (9) community submissions were received, comprising of seven (7) objections and two (2) submissions supporting the proposal. The issues raised relate to traffic impacts and the sale of the land.

One (1) State agency submission was received from Transport for NSW.

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

The community submissions indicating support for the proposal did not provide specific or related comments.

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

The table below summarises the key issues raised in the community submissions.

Table 3 Summary of Key Issues

Issue raised	Submissions* (%)	Council response and Department assessment of adequacy of response
Traffic impacts <ul style="list-style-type: none">Inadequate signage on Port Hacking Road causing safety concerns.Requests for improved traffic measures and signage to prevent accidents	45% (4 out of 9 submissions)	Council Response: Traffic generation and management will be addressed at the development application (DA) stage. The planning proposal seeks to rezone the land to formalise its use as a car park, acknowledging its long-standing informal use for parking. Traffic patterns are expected to align with off-peak times, as most church services and community events occur outside peak hours. The DA traffic and parking report identified space for 22 car parking spots on the road reserve. Suggestions to widen Port Hacking Road are beyond Council's jurisdiction, as it is a State road.
Sale of land <ul style="list-style-type: none">Opposition to selling public land; preference for retaining or leasing it.Calls for transparent processes, including public auctions.Suggestions to use the land for green space or community purposes.	67% (6 out of 9 submissions)	Council Response: The land has already been sold to the Coptic Orthodox Church, which owns 76-86 Port Hacking Road. In 2020, the church approached Council to purchase the road reserve for formal car parking. Following an independent valuation, Council approved the road closure and sale (SER010-20, Minute No. 235). The rezoning and sale were justified as a public benefit, transferring the responsibility for embellishing and maintaining the car park to the church at no cost to Council. Leasing was deemed unviable as it would require Council to prepare and maintain the site. The church's DA stated sufficient on-site parking would cover most uses, with the road reserve available for overflow

Issue raised	Submissions* (%)	Council response and Department assessment of adequacy of response
		parking, as had been the practice when the site was a nursery.

Note* - The number of submissions indicates how many times the key themes/issues were raised in the written submissions, including those supporting or opposing the proposal. The total number in this column exceeds the total number of submissions received, as some submissions provided comments on more than one key theme.

The Department considers that Council has adequately addressed the issues raised in the community submissions relevant to this planning proposal.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with Transport for NSW who has provided the following feedback.

Table 4 Advice from public authorities

Agency	Advice raised	Council response
Transport for NSW (TfNSW)	<p>Recommends removal of the subject site's vehicular access to / from Port Hacking Road, consistent with the Government Gazette no. 394 of Friday 1 September 2023.</p> <p>Notes the site has been sold by Council to the Coptic Orthodox Church and that the two sites will be amalgamated into one large site resulting in a consolidated vehicular access point via Port Hacking Road.</p> <p>Notes that it will provide more detailed comments in relation to a future site driveway / entrance requirements (e.g. deceleration lanes, slip lanes), when this site proceeds to the Part 4 DA stage and detailed plans can be provided.</p>	<p>The church at 76 Port Hacking Road relies on a right of carriageway through the subject site as its only legal vehicular access point. While the Gazette removed general rights of passage over Lot 1 DP1284163 (the subject site), it retained access rights for Lot 1 DP1265251 (the church) from Port Hacking Road. Access from Shoalhaven Road is not feasible due to the suburban nature and challenging access requirements.</p> <p>Condition 58 of the sale contract dated 6 May 2024 requires the consolidation of the subject site with Lot 1 DP1265251 within 12 months, facilitating the cessation of the right of carriageway. Following consolidation, a DA for a formal carpark is expected, aligning with TfNSW's request.</p>

The Department considers Council has adequately addressed matters raised in submissions from TfNSW.

3.3 Post-exhibition changes

No post exhibition changes have been made to the planning proposal.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes, including community and agency consultation.

The following reassesses the proposal submitted to the Department for finalisation against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement.

As outlined in the Gateway determination report, the planning proposal is:

- consistent with the regional and district plans relating to the site
- consistent with the Council's Local Strategic Planning Statement
- consistent with all relevant SEPPs.

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

Table 5 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	Unresolved at Gateway, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 6 Summary of site-specific assessment

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

4.1 Detailed assessment

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

Consistency with the following Section 9.1 Ministerial Directions has been resolved since the Gateway assessment, as detailed below:

Table 7 Section 9.1 Ministerial Directions

Directions	Comments
4.1 Flooding	<p>This Direction seeks to ensure development of flood prone land is consistent with the Flood Risk Management Manual and ensure LEP provisions are commensurate with the flood behaviour and consider the potential impacts on and off the land.</p> <p>Part of the site has been identified as flood prone by Council's online flood prone land map as detailed in the Department's Gateway determination report. The Direction requires that a planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Employment, Mixed Use, W4 Working Waterfront or Special Purpose Zones, and must not allow development in flood-prone areas that increases flood risks, density, or emergency costs, enables hazardous or high-risk uses, or permits development without consent, except for exempt uses or agriculture.</p> <p>Gateway condition 1(c) requires explanation to justify consistency with Direction 4.1 Flooding, and address <i>the Flood Risk Management Manual (2023)</i> and 2022 Flood Inquiry.</p> <p>As part of the finalisation document package, Council submitted a response outlining its assessment of the proposal against the requirements of the Direction, including considerations of <i>the Flood Risk Management Manual (2023)</i> and 2022 Flood Inquiry.</p> <p>Council's response and mapping confirm that the site is not identified as floodway or flood storage, with only a small section in the northern part classified as flood fringe by the <i>Gwawley Bay Floodplain Management Study (2015)</i>.</p>

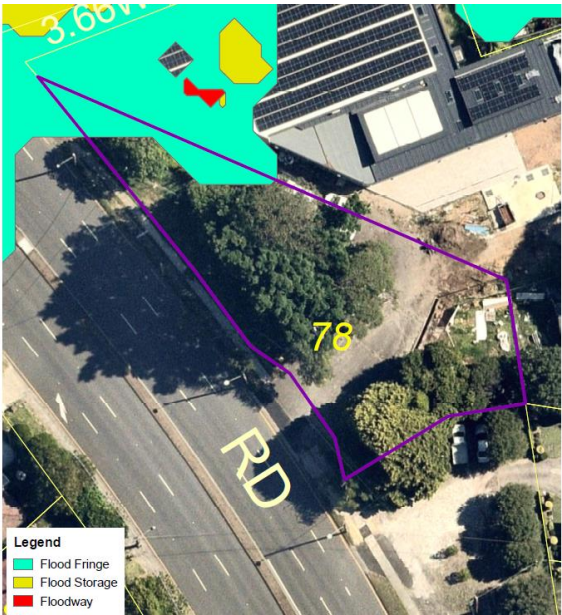
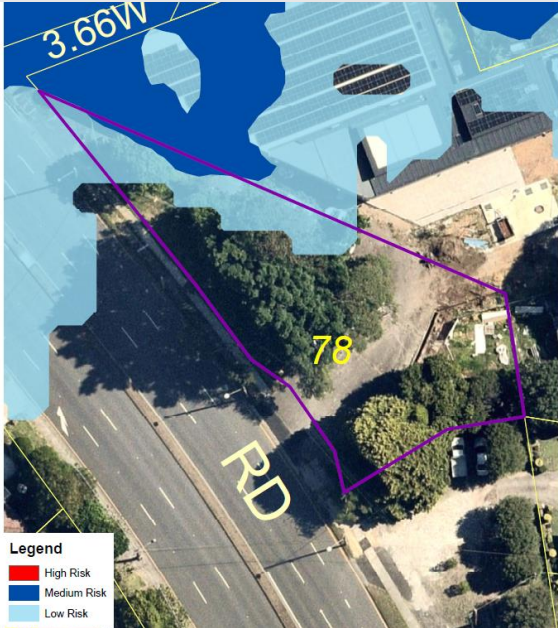
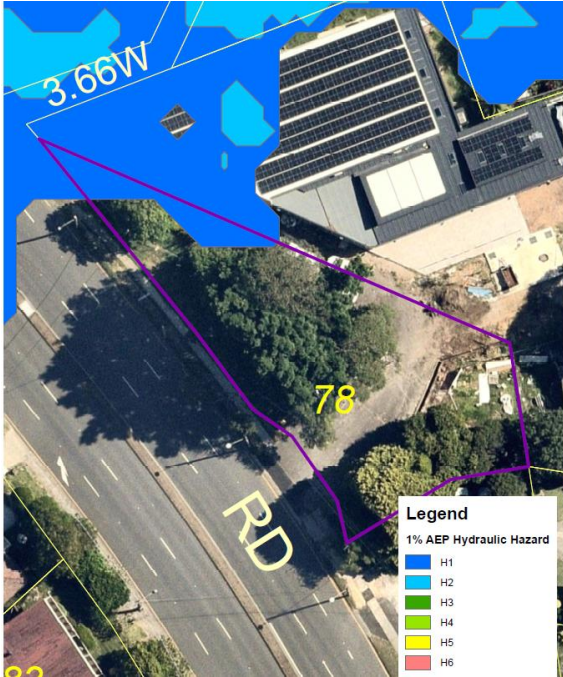


Figure 2 Flood affection of the site (outlined) (Source: Sutherland Shire Council)

Directions	Comments
	<div></div> <p>Figure 3 Flood risk classification of the site (outlined) (Source: Sutherland Shire Council)</p> <p>Only a small part of the site is flood affected, identified as medium risk where sensitive uses, such as child care centres and hospitals, are unsuitable according to Council’s Development Control Plan (DCP). Council’s response notes that the site is generally accessible via alternative routes outside flood prone areas. Future development will mitigate flood risks via Clause 5.21 of the LEP and relevant DCP controls.</p> <div></div> <p>Figure 4 Flood hazard classification of the site (outlined) (Source: Sutherland Shire Council)</p>

Directions	Comments
	<div></div> <p>Figure 5 Flood hazard classification of the site (outlined) (Source: Sutherland Shire Council)</p> <p>Council's response concludes that the inconsistency of the planning proposal with the Direction is minor and justifiable due to the limited estimated flood extent on the site and future DAs will be assessed in accordance with Council's DCP or relevant Council policies.</p> <p>Having regard to Council's response and supporting information and the nature of this planning proposal, the Department is satisfied that the inconsistency with this Direction is of minor significance as determined by Council.</p>
4.4 Remediation of Contaminated Land	<p>The objective of the Direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities. The Direction requires that the planning proposal authority consider whether the land is contaminated and if so, that it be satisfied the land is suitable or can be made suitable for the purposes permitted within the proposed zone.</p> <p>As the planning proposal submitted at Gateway did not provide any information regarding consideration of this Direction, Gateway condition 1(a) of the Gateway determination requires a Preliminary Site Investigation to be undertaken to determine whether the site is suitable for residential zoning, and the planning proposal to be updated to address consistency with this Direction.</p> <p>As part of the finalisation document package, Council submitted a Preliminary Site Investigation report (dated 17 June 2024) for the site, prepared by EI Australia. The report, which was completed with reference to the <i>Consultants Reporting on Contaminated Land: Contaminated Land Guidelines</i>, found that the site has a low potential for contamination. The site has served as a road reserve since the 1930s and is surrounded by residential properties, with no nearby heavy industrial operations. The inspection found no visible evidence of gross contamination or any</p>

Directions	Comments
	<p>underground or aboveground storage tanks. Furthermore, the site and its immediate vicinity are free from any statutory notices or licensing agreements related to contaminated land management. The site is also not listed on the NSW Contaminated Sites Register. While a nearby Caltex service station is listed, it is located at a distance and its potential for contaminating the site is deemed unlikely due to its position relative to the site's hydraulic gradient. Finally, a qualitative conceptual site model (CSM) supports the assessment of low contamination risk for the site. No further detailed site investigation is recommended by the Preliminary Site Investigation report.</p> <p>Based on the submitted information, the Department is satisfied that Council has considered whether the land is contaminated as required by the Direction and that the issues identified at Gateway have been resolved. As required by <i>the State Environmental Planning Policy (Resilience and Hazards) 2021</i>, contamination matters will be further considered at the DA stage.</p>
5.2 Reserving Land for Public Purposes	<p>The objectives of this Direction are to facilitate the provision of public services by reserving land for public purposes and removal of land reservations that are no longer required for acquisition.</p> <p>The site is currently zoned SP2 Infrastructure (Classified Road). According to the Council Report of 25 November 2024, the site has been sold by Council. Transport for NSW acknowledged the sale of the land and did not object to the proposed rezoning.</p> <p>Gateway condition 1(a) of the Gateway determination requires additional information on the closure of the road reserve in accordance with the <i>Roads Act 1993</i> to be provided, and consistency with this Direction to be addressed.</p> <p>As part of the finalisation document package, Council submitted a copy of the NSW Government Gazette No 394 of 1 September 2023, which contains a Notification of Road Closure under the <i>Roads Act 1993</i>, outlining that the land within Lot 1 in DP 1284163 (the subject site) ceases to be public road, will vest in Sutherland Shire Council and is classified as operational land for the purpose of the <i>Local Government Act 1993</i>.</p> <p>Having regard to the above, the Department is satisfied that Council has addressed the matters outlined in the Gateway condition, and the planning proposal is consistent with this Direction, subject to approval by a delegate of the Planning Secretary in the finalisation of the LEP.</p>

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 8 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Digital LEP maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i></p> <p>Council confirmed on 17/01/2025 that it approved the draft LEP and maps.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Certificate	Parliamentary Counsel Certificate is not required for map-only amendments.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

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

- the draft LEP has strategic merit being consistent with the *Greater Sydney Region Plan* and the *South District Plan*
- it is consistent with the Gateway Determination
- issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



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